

Vol. I

TRANSCRIPT OF RECORD

2

Supreme Court of the United States

OCTOBER TERM, 1944

No. 377

PRECISION INSTRUMENT MANUFACTURING COM-
PANY, KENNETH B. LARSON, AND SNAPON
TOOLS CORPORATION, PETITIONERS,

VS.
AUTOMOTIVE MAINTENANCE MACHINERY
COMPANY

ON WRIT OF HABEAS CORPUS TO THE UNITED STATES CIRCUIT COURT OF
APPEALS FOR THE SEVENTH CIRCUIT

PETITION FOR CERTIORARI FILED AUGUST 3, 1944

CERTIORARI GRANTED OCTOBER 16, 1944

IN THE
Supreme Court of the United States

OCTOBER TERM, A. D. 1944.

No. _____

PRECISION INSTRUMENT MANUFACTURING COM-
PANY, KENNETH R. LARSON AND SNAP-ON TOOLS
CORPORATION,

Petitioners,

vs.

AUTOMOTIVE MAINTENANCE MACHINERY
COMPANY,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE SEVENTH CIRCUIT.

INDEX.

Index to printed record of proceedings in U. S. District Court.	
Clerk's certificate to printed record of proceedings in U. S. District Court, Volume I.	574a
Clerk's certificate to printed record of proceedings in U. S. District Court, Volume II.	1201
Index to proceedings in U. S. Court of Appeals:	
Placita.	1203
Appearance for Appellant, filed August 30, 1943.	1204
Appearance for Appellees, filed September 2, 1943.	1205
Appearance for Appellees, filed September 2, 1943.	1206
Appearance for Appellant, filed January 20, 1944.	1207
Appearance for Appellees, filed March 23, 1944.	1208
Order taking cause under advisement, entered April 20, 1944.	1209
Opinion by Sparks, C. J., filed June 26, 1944.	1210
Judgment, entered June 26, 1944.	1225
Application for Stay of Mandate, filed July 8, 1944.	1226
Order Staying Mandate, entered July 10, 1944.	1227
Clerk's certificate.	1229



VOL. I pp. 1 to 574.

TRANSCRIPT OF RECORD

**In the
United States Circuit Court of Appeals
For the Seventh Circuit**

No. 8392

**AUTOMOTIVE MAINTENANCE MACHINERY
COMPANY,**

Plaintiff-Appellant,

vs.

**PRECISION INSTRUMENT MANUFACTURING COM-
PANY, KENNETH R. LARSON AND SNAP-ON TOOLS
CORPORATION,**

Defendants-Appellees.

**Appeal from the District Court of the United States for the
Northern District of Illinois, Eastern Division.**

THE QUINCY-WARDEN PRINTING COMPANY, 21 WEST JACKSON, CHICAGO

**TRANSCRIPT OF RECORD FILED AUG. 30, 1943.
PRINTED RECORD.**

In the
United States Circuit Court of Appeals
For the Seventh Circuit

No. 8392

**AUTOMOTIVE MAINTENANCE MACHINERY
COMPANY,**

Plaintiff-Appellant,

vs.

**PRECISION INSTRUMENT MANUFACTURING COM-
PANY, KENNETH R. LARSON AND SNAP-ON TOOLS
CORPORATION,**

Defendants-Appellees.

Appeal from the District Court of the United States for the
Northern District of Illinois, Eastern Division.

INDEX.

Placita	1
Amended and Supplemental Complaint, No. 4382, filed Nov. 30, 1942	2
Amended Answer, No. 4382, filed Feb. 8, 1943	7
Third Amendatory Petition for Declaratory Decree, No. 4451, filed Mar. 1, 1943	15
Answer to Third Amended Petition, etc., No. 4451, filed Mar. 10, 1943	37
Amended and Supplemental First Counterclaim, No. 4451, filed Nov. 23, 1942	52
Answer to First and Second Counterclaims, No. 4451, filed Dec. 14, 1942	55
Answer of Intervenor to Amended and Supplemental First Counterclaim, No. 4451, filed Mar. 1, 1943	61
Stipulation re Pleadings, No. 4382, filed Aug. 6, 1943	69
Motion re Reassignment, No. 4451, filed Mar. 1, 1943	75
Order transferring cause No. 4451 to Executive Com- mitter, entered Mar. 1, 1943	77
Order reassigning cause No. 4451, to Judge Igoe, en- tered Mar. 3, 1943	77
Motion to consolidate causes, filed Mar. 9, 1943	78
Motion for order that Kenneth R. Larson appear and testify, filed Mar. 9, 1943	80
Petition in support of Motion for Order, etc., filed Mar. 9, 1943	84
Motion of Precision Instrument Mfg. Co. et al., for separate trial, filed Mar. 23, 1943	86
Order consolidating causes, entered Mar. 27, 1943	88
Order on motion re appearance, etc., entered Mar. 27, 1943	88
Order re withdrawal of appearance, etc., entered Apr. 20, 1943	89
Withdrawal of appearance, filed Mar. 3, 1943	90

PRETRIAL TESTIMONY.

WITNESSES FOR AUTOMOTIVE MAINTENANCE MACHINERY CO.

Testimony of:

Carlson, Walter (Deposition of)	119
Johnson, Joseph (Deposition of)	169
Larson, Kenneth R.	91

REPORT OF PROCEEDINGS.

Colloquy	212, 352
----------------	----------

WITNESSES FOR PLAINTIFF.

Testimony of:

Allen, Victor	672
Dunbar, David O.	824
Eidler, Raymond E.	741
Haight, Edward A.	631
Hobbs, Merville K.	575
Lindley, Harry W., Jr.	684
Rafferty, Thomas J.	659
Salmon, Rudolph B.	646

WITNESSES FOR DEFENDANT.

Testimony of:

Alberts, Harry C.	382, 570
Baumann, Howard R.	251
Carlson, Walter	341
Johnson, Joseph	363
Krichaver, David M.	284
Larson, Kenneth R.	214

Thomasma, George B.	312
Thomasma, John	307
Travis, M. C.	300
Wacker, Frederick Glade (Deposition of)	492
Wacker, Frederick Glade	556
Wise, John A.	267

PLAINTIFF'S EXHIBITS.

	Intro- duced in evidence at page	Repro- duced at page
3 Contract of Dec. 20, 1940 between Snap-On and Larson-Precision, with assignment of Larson Application Ser. No. 232,723 by Snap-On to Larson and Precision	381	831
4 Letter, October 26, 1938, Snap-On to Larson	360	836
7 Letter, November 11, 1940, Snap-On to Precision	379	837
8 Letter, October 18, 1938, Alberts to Snap-On	379	838
8-A Larson Affidavit of October 18, 1938	248	839
10 Letter, December 19, 1940, Alberts to Snap-On	379	840
13 Alberts Memorandum of Dec. 18, 1940 re conference of Nov. 28, 1940	478	843
14 Raftery Notebook dated Oct. 7, 1940	663	
15 Raftery Notebook dated Oct. 30, 1940	663	
16 Letter, December 26, 1940, Fidler to Raftery	575	845
17 Johnson Deposition taken April 14, 1943	379	
18 Snap-On and Precision Agreement of January 16, 1941	381	846

	Intro- duced in evidence at page	Repro- duced at page
19 Snap-On and Precision supplemental Agreement (Rider) of March 26, 1941	381	854
20 Letter, January 31, 1941, Alberts to Krichiver	468	859
21 Letters of 4/27/40, 7/15/40, 12/10/40, 1/9/41 and 1/29/41 referred to in Plaintiff's Exhibit 20	469	861
22 Letter, December 26, 1940, Fidler to Alberts	478	865
23 Letter, December 31, 1940, Fidler to Hobbs	482	866
24 Drawings of Larson Patent No. 2,312,104 of Feb. 23, 1943	491	867
25 Certified Copy of Original Petition and Oath of Application of Larson Pat- ent No. 2,312,104 of Feb. 23, 1943	491	871
26 Letter, June 30, 1941, Wacker to Fidler	557	873
29 Letter, December 6, 1940, Fidler to Hobbs	575	873
30 Letter, December 18, 1940, Lindsey to Alberts	575	875
31 Letter, December 18, 1940, Lindsey to Hobbs	575	876
32 Letter, December 18, 1940, Alberts to Hobbs	575	876
33 Letter, December 18, 1940, Hobbs to Pre- cision and Larson	575	878
34 Letter, December 19, 1940 Hobbs to Al- berts	575	879
35 Letter, December 19, 1940, Hobbs to Pre- cision	575	880

	Intro- duced in evidence at page	Repro- duced at page
36 Letter, December 23, 1940, Fidler to Hobbs	575	881
37 Letter, December 26, 1940, Fidler to Hobbs	575	882
38 Letter, December 26, 1940, Hobbs to Alberts	575	883
39 Letter, December 28, 1940, Fidler to Hobbs	575	883
40 Letter, December 28, 1940, Alberts to, Hobbs	575	884
41 Letter December 30, 1940, Hobbs to Precision	575	885
42 Letter, December 30, 1940, Hobbs to Fidler	575	885
43 Letter, January 2, 1941, Hobbs to Alberts	575	886
44 Letter, January 4, 1941, Hobbs to Fidler	575	887
45 Letter, January 6, 1941, Fidler to Hobbs	575	888
46 Letter, July 2, 1941, Fidler to Hobbs	575	888
47 Letter, July 3, 1941, Hobbs to Precision	575	889
48 Letter, July 16, 1941, Precision to Hobbs	575	889
49 Letter, July 21, 1941, Hobbs to Fidler	575	890
50 Letter, December 19, 1940, Hobbs to Alberts	575	891
51 Photostatic Copy of Drawings of second Larson Application	572	893
52 Wrench Model from which Application Drawings of Larson Patent No. 2, 312,104 were made	574	
56 Photostatic Copy of Interference Ex- hibit 27 Drawing	648	897

	Intro- duced in evidence at page	Repro- duced at page
57. Standard Thomasma Drawing Used by Salmon	648	899
58. Salmon's Work Sheet	648	901
59. Memorandum of Dec. 11, 1940 entitled "Minimum Terms for Total Settle- ment"	584	903
60. Letter, June 3, 1940, Wacker to Fidler ..	791	903
61. Letter, May 31, 1940, Fidler to Wacker	791	904
61-A Copy of Examiner's Decision of May 29, 1940	791	905
62. Carlsen Deposition taken April 13, 1943	827	
63. Larson Discovery Testimony given March 27, 1943 before Judge Iggoe ...	828	906
64-A Stipulation re Exhibit No. 65		906
65. Larson Patent No. 2,279,792 in suit	828	1148
66. Zimmerman Patent No. 2,283,888 in suit	828	1160
67. Zimmerman Patent No. Re. 22,219 in suit	828	1184
68. Stipulation with respect to Exhibits	828	911

2 DEFENDANTS' EXHIBITS:

1. Wrench manufactured by Ammeo and sold to Snap-On	213	
2. Wrench manufactured by Precision in 1939-1940 and covered by Larson Ap- plication in Interference	213	
3. Wrench presently manufactured and sold by Precision to Snap-On and charged to infringe	213	
4. Contract of December 20, 1940 between Ammeo, Larson and Precision	212	914
5. Contract of December 20, 1940 between Ammeo and Snap-On	212	919

	Intro- duced in evidence at page	Repro- duced at page
6 Certificate of State of Illinois re com- mission of Esther Meltzer as Notary Public		214
7 Board of five wood patterns		214
8 Board of Wrenches and parts		214
9 Drawing (Interference Exhibit 27)		214
10 Transcribed Depositions and portions thereof taken on behalf of Larson in Interference 77,565		216
11 Memorandum letter, November 5, 1940, Wacker to Fidler	555	924
12 Salmon Work Sheet	555	
13 Fidler Memoranda of Oral Reports of Investigator, bearing dates 8 12 40, etc.	516	928
14 Draft of Proposed Agreement between Ammco and Snap-On, Precision and Larson	538	934
15 Draft of Proposed Agreement between Ammco and Snap-On	538	939
16 Draft of proposed agreement between Ammco and Precision and Larson	539	944
17 Letter, June 23, 1941, Wacker to Thomasma	334	949
18 Letter, July 1, 1941, Thomasma to Wacker	335	950
19 Letter, December 27, 1940, Wacker to Fidler	381	950
21 Thomasma Affidavit executed November 15, 1940	266	952
22 Thomasma Drawing	341	
22-A Bottom portion of Defendants' Exhibit 22	341	1013

	Intro- duced in evidence at page	Repro- duced at page
26 John A. Wise Invoices dated 8 10 40 to 1/4 41	284	1015
27 June 27, 1942 receipt, Thomasma to Fidler	314	1020
28 Letter, April 1, 1941, Wacker to Thomasma	567	1021
29 Letter, April 16, 1941, Thomasma to Wacker	333	1023
30 Letter, April 21, 1941, Wacker to Thomasma	333	1023
31 Letter, June 4, 1941, Wacker to Thomasma	567	1025
32 Letter, June 21, 1941, Wacker to Thomasma	567	1025
33 Letter, June 25, 1941, Wacker to Thomasma	567	1026
34 Letter, July 2, 1941, Fidler to Wacker ..	567	1027
34 A Letter, June 30, 1941, Thomasma to Fidler	567	1027
35 Letter, July 8, 1941, Wacker to Thomasma	567	1028
36 Letter, July 28, 1941, Wacker to Thomasma	567	1028
37 Letter, March 25, 1942, Thomasma to Wacker	568	1029
38 Letter, April 1, 1942, Thomasma to Wacker	568	1030
39 Letter, April 22, 1942, Thomasma to Wacker	568	1030
40 Letter, April 28, 1942, Wacker to Thomasma	568	1031
41 Letter, June 12, 1942, Wacker to Thomasma	568	1032

	Intro- duced in evidence at page	Repro- duced at page
43 Letter, October 10, 1940, Fidler to Wacker	568	1032
44 Letter, April 21, 1941, Wacker to Fidler	567	1034
45 Letter, June 20, 1941, Fidler to Thomasma	567	1034
46 Letter, June 24, 1941, Thomasma to Fidler	336	1035
47 Letter, June 25, 1941, Wacker to Fidler	567	1036
48 Letter, June 27, 1941, Fidler to Thomasma	567	1036
49 Letter, June 30, 1941, Thomasma to Fidler	337	1039
50 Letter, December 1, 1941, Thomasma to Fidler	568	1039
52 Salmon Invoice of Dec. 27, 1940	649	1040
60 Letter, February 3, 1941, Wacker to Fidler	565	1040
61 Larson-Snap-On Agreement of Sept. 28, 1938	221	1041
62 Letter, November 11, 1940, Alberts to Larson and Carlsen	250	1044
63 Letter, December 4, 1940, Hobbs to Precision	250	1045
64 Draft of Letter, dated December 4, 1940, proposed to be sent by Hobbs to Fidler	250	1046
65 December 4, 1940 Statement of Haight, Goldstein & Hobbs	250	1047
66 Letter, December 6, 1940, Hobbs to Fidler	250	1047
67 Letter, December 18, 1940, Hobbs to Larson	250	
68 Letter, December 19, 1940, Lindsey to Alberts	371	1048

	Intro- duced in evidence at page	Repro- duced at page
69 Letter, December 19, 1940, Alberts to Snap-On	426	
70 Alberts' Memorandum dated November 21, 1940	412	1050
71 Letter, December 3, 1940, Alberts to Fidler	415	1053
72 Alberts' Memorandum dated Dec. 11, 1940	419	1054
72-A Letter, December 12, 1940, re Defend- ants' Ex. 72, Alberts to Snap-On	419	1056
73 Letter, December 17, 1940, Alberts to Fidler	423	1057
74 Letter, December 18, 1940, Lindsey to Alberts	424	
75 Letter, December 19, 1940, Hobbs to Alberts	425	1062
76 Letter, December 19, 1940, Alberts to Lindsey	426	1063
77 Notice of Taking Interference Testi- mony on Dec. 23, 1940	428	1068
78 Wacker Deposition taken April 23, 1943	556	
79 Letter, October 13, 1939, Fidler to Wacker	568	1069
80 Letter, November 9, 1939, Wacker to Fidler	568	1071
81 Letter, November 13, 1939, Fidler to Wacker	568	1072
81-A Dun & Bradstreet Report on Precision	568	1073
82 Letter, November 21, 1939, Fidler to Wacker	568	1076
82-A Summary of Precision Articles of In- corporation	568	1077

	Intro- duced in evidence at page	Repro- duced at page
83 Letter, November 24, 1939, Wacker to Fidler	568	1079
84 Letter, June 4, 1940, Fidler to Wacker ..	568	1080
85 Letter, July 22, 1940, Fidler to Wacker ..	568	1082
86 Letter, July 24, 1940, Wacker to Fidler ..	568	1083
87 Letter, August 5, 1940, Fidler to Wacker ..	568	1084
88 Letter, August 16, 1940, Fidler to Wacker ..	569	1086
89 Letter, September 20, 1940, Fidler to Wacker	569	1087
90 Letter, October 19, 1940, Fidler to Wacker	569	1088
91 Letter, November 4, 1940, Fidler to Wacker	569	1089
91-A Memo Letter, October 31, 1940, Stroditz and McFarland to Fidler	569	1090
92 Letter, November 23, 1940, Fidler to Wacker	569	1090
93 Letter, November 23, 1940, Fidler to Wacker	569	1091
94 Letter, December 21, 1940, Fidler to Wacker	569	1092
95 Letter, December 26, 1940, Fidler to Wacker	569	1094
96 Letter, December 26, 1940, Fidler to Wacker	569	1096
97 Letter, December 28, 1940, Fidler to Wacker	569	1097
98 Letter, January 24, 1941, Fidler to Wacker	569	1098
99 Letter, January 31, 1941, Fidler to Wacker	569	1099
100 Letter, June 27, 1941, Fidler to Wacker ..	569	1101

	Intro- duced in evidence at page	Repro- duced at page
101 Letter, November 29, 1940, Hobbs to Fidler	569	1101
102 Letter, December 6, 1940, Hobbs to Thomasina	646	1102
103 Letter, November 19, 1940, Alberts, to Rafferty	737	1103
104 Wrench comprising Larson Exhibit 31 in Interference 77,565	828	
105 Wrench comprising Larson Exhibit 37 in Interference 77,565	828	
106. File of Documentary Exhibits offered in evidence during taking of Larson's proofs in Interference No. 77,565	828	
Plaintiff's proposed Findings of Fact, etc., filed June 18, 1943		1104
Defendants' proposed Findings of Fact, etc., filed June 28, 1943		1117
Findings of Fact and Conclusions of Law, filed July 12, 1943		1121
Memorandum, filed July 12, 1943		1126
Judgment, entered July 12, 1943		1127
Notice of Appeal, filed July 22, 1943		1128
Statement of Points		1129
Bond on Appeal		1134
Order re physical exhibits		1136
Designation of Record		1137

UNITED STATES LETTERS PATENT.

No. 2,279,792—K. R. Larson, April 14, 1942	1148
No. 2,283,888—H. W. Zimmerman, May 19, 1942	1160
No. 22,219 (Reissue)—H. W. Zimmerman, November 3, 1942	1184
Clerk's Certificate	1199
Order allowing certiorari	1220

1 Pleas in the District Court of the United States
for the Northern District of Illinois, Eastern Division,
begun and held at the United States Court Room, in
the City of Chicago, in said District and Division, before
the Honorable Michael L. Igoe, District Judge of the
United States for the Northern District of Illinois, on the
twelfth day of July, in the year of our Lord one thousand
nine hundred and forty-three, being one of the days of the
regular July Term of said Court, begun Monday, the fifth
day of July, and of our Independence the 168th year.

Present:

Honorable Michael L. Igoe, District Judge.
William H. McDonnell, U. S. Marshal.
Roy H. Johnson, Clerk.

2 Amended and Supplemental Complaint—No. 4382.

2 IN THE DISTRICT COURT OF THE UNITED STATES,
Northern District of Illinois,
Eastern Division.

Automotive Maintenance Machinery Co.,
vs.

Precision Instrument Manufacturing Company, Kenneth R. Larson and Walter A. Carlsen.

Civil Action
No. 4382.
Consolidated.

Snap-On Tools Corporation, a Delaware Corporation,
Petitioner,

vs.

Automotive Maintenance Machinery Co., an Illinois corporation,
Respondent,

and Precision Instrument Manufacturing Company, an Illinois Corporation,
Intervenor.

Civil Action
No. 4451.
(Consolidated With
Civil Action
No. 4382.)

Be It Remembered, that an Amended and Supplemental Complaint in Civil Action No. 4382 was filed in the office of the Clerk of the District Court of the United States for the Northern District of Illinois, Eastern Division, on this the 30th day of November, A. D. 1942, in words and figures following, to-wit:

3 IN THE UNITED STATES DISTRICT COURT,
(Caption—4382)

AMENDED AND SUPPLEMENTAL COMPLAINT.

To the Honorable Judges of the United States District Court for the Northern District of Illinois, Eastern Division:

4 Automotive Maintenance Machinery Co. brings this, its Amended and Supplemental Complaint, against Precision Instrument Manufacturing Company, Kenneth R. Larson and Walter A. Carlsen, and alleges as follows:

I.

The plaintiff, Automotive Maintenance Machinery Co., is a corporation duly organized and existing under the laws of the State of Illinois, with its principal place of business at North Chicago, County of Lake and State of Illinois.

II.

The defendant, Precision Instrument Manufacturing Company, is a corporation duly organized and existing under the laws of the State of Illinois, with its principal place of business at Des Plaines, County of Cook and State of Illinois, and it has a regular and established place of business in Des Plaines, County of Cook and State of Illinois, within the Northern District of Illinois, Eastern Division, where it has committed acts of infringement hereinafter complained of; and each of the defendants, Kenneth R. Larson and Walter A. Carlsen, is a citizen of the State of Illinois and is an inhabitant of said Eastern Division of the Northern District of Illinois and has a regular and established place of business therein, where each of said defendants has committed acts of infringement hereinafter complained of. The word "defendants", as hereinafter used in this Amended and Supplemental Complaint, shall mean all of the foregoing defendants, and each of them, jointly as well as severally.

III.

This is a suit arising under the United States Patent Laws for infringement of United States Letters Patent and for an accounting of profits and damages and for an injunction.

IV.

On January 13, 1942, United States Letters Patent No. 2,269,503 were duly and legally issued to plaintiff, Automotive Maintenance Machinery Co., on an application filed by Herman W. Zimmerman for an invention in Torque Measuring Wrench, and on November 3, 1942, reissue of said patent was duly and legally issued to plaintiff as Letters Patent No. Re. 22,219; and since the respective

4 *Amended and Supplemental Complaint—No. 4382.*

dates of issue of said Letters Patent plaintiff has been the sole and exclusive owner thereof, and still is the sole and exclusive owner of said reissue patent.

V.

On April 14, 1942, United States Letters Patent No. 2,279,792 were duly and legally issued to plaintiff, Automotive Maintenance Machinery Co., on an application filed by said Kenneth R. Larson for an invention in Torque Wrench; and since that date plaintiff has been and still is the sole and exclusive owner of said Letters Patent.

VI.

On May 19, 1942, United States Letters Patent No. 2,283,888 were duly and legally issued to plaintiff, Automotive Maintenance Machinery Co., on an application filed by Herman W. Zimmerman for an invention in Torque Measuring Wrench; and since that date plaintiff has been and still is the sole and exclusive owner of said Letters Patent.

VII.

As of December 20, 1940, plaintiff, Automotive Maintenance Machinery Co., and defendant, Precision Instrument Manufacturing Company, and defendant, Kenneth R. Larson, entered into a certain agreement in and with respect to the inventions described and claimed in said Letters Patent Nos. Re. 22,219 (and the original thereof No. 2,269,503), 2,279,792 and 2,283,888, and each of them, wherein said defendants, and each of them, inter alia, assigned to plaintiff their entire right, title and interest in and to the application of said Kenneth R. Larson upon which said Letters Patent No. 2,279,792 have issued, and agreed, upon completion of certain orders for wrenches on hand as of the date of said agreement, to discontinue the manufacture and/or sale and/or use of torque wrenches embodying the inventions of said Letters Patent Nos. Re. 22,219 (and the original thereof No. 2,269,503), 2,279,792 and 2,283,888, and further agreed that they would not thereafter, directly or indirectly, infringe said Letters Patent when they should issue and further agreed not to, directly or indirectly, contest the validity

of any claim or claims of said Letters Patent, or any of them; and the defendant, Walter A. Carlsen, was fully informed of said agreement at the time of its execution and participated in the negotiations terminating in the same and executed said agreement as Secretary of said Precision Instrument Manufacturing Company, all as shown by said agreement, a copy of which is attached hereto and marked Plaintiff's Exhibit 1.

VIII.

The said inventions described and claimed in said Letters Patent, and each of them, are of great utility and value; said inventions have been and are of great benefit and advantage to plaintiff and the public; and the trade and public, including said defendants, have acknowledged and acquiesced in the validity of said Letters Patent, and each of them, and in the aforesaid rights of plaintiff.

IX.

The defendants have been given written notice by plaintiff, Automotive Maintenance Machinery Co., of said Letters Patent No. Re. 22,219 (and the original thereof No. 2,269,503) and No. 2,279,792, and of their infringement thereof; and as to said Letters Patent Nos. 2,269,503, 2,279,792 and 2,283,888, defendants had knowledge of the applications maturing into the same, and as to said Letters Patent Nos. 2,269,503 and 2,283,888 plaintiff has placed the required statutory notice respecting the same on torque wrenches made and sold by plaintiff under said Letters Patent, which torque wrenches have been made and sold in large quantities by plaintiff.

X.

The defendants have, within the last six years, and prior to the filing of this Amended and Supplemental Complaint, and subsequent to the issue of said Letters Patent, and each of them, infringed said Letters Patent, and each of them, in defiance of plaintiff's rights acknowledged and acquiesced in by the defendants and further in violation of the terms and conditions of said agreement entered into as of December 20, 1940, and the defendants continue

6 *Amended and Supplemental Complaint—No. 4382.*

to infringe said Letters Patent Nos. 2,279,792, 2,283,888 and Re. 22,219, and each of them, by wilfully, maliciously and without the consent or license of plaintiff, making or causing to be made, selling or causing to be sold and using or causing to be used, within the Northern District of Illinois, Eastern Division thereof, and elsewhere within the United States, torque wrenches made in accordance with and embodying the inventions of said Letters Patent.

XI.

Plaintiff is informed and believes, and therefore avers, that the defendants, Kenneth R. Larson and Walter A. Carlsen, have engaged jointly and severally with the defendant, Precision Instrument Manufacturing Company, in committing acts of infringement of said Letters Patent, and each of them; that said Kenneth R. Larson is President and a director of said defendant corporation and that said Walter A. Carlsen is a director and Secretary thereof; that said defendants, Kenneth R. Larson and Walter A. Carlsen, were and are two of the original incorporators of said defendant corporation, caused the incorporation of said defendant corporation, and now own, and at all times since said incorporation have owned, a large part of the stock of said defendant corporation and are individually and personally responsible with said defendant corporation for the intentional, willful and malicious violation of plaintiff's rights, as herein set forth; and plaintiff further avers that said defendants, Kenneth R. Larson and Walter A. Carlsen, have at all times been fully conversant in and with respect to plaintiff's rights as herein set forth and each of them has personally participated in the acts of infringement complained of and the violation of the terms and conditions of said agreement.

Wherefore plaintiff, Automotive Maintenance Machinery Co., prays for a preliminary and final injunction against further infringement of said Letters Patent Nos. 2,279,792, 2,283,888 and Re. 22,219, by the defendants, Precision Instrument Manufacturing Company, Kenneth R. Larson and Walter A. Carlsen, and those controlled by defendants, for an accounting of profits and damages, and for an assessment of costs herein; and plaintiff

further prays for such other and further relief as the Court may deem just.

Automotive Maintenance Machinery Co.,
By Davis, Lindsey, Smith & Shonts,
Its Attorneys,
332 South Michigan Avenue,
Chicago, Illinois.

Of Counsel:

Raymond E. Fidler,
Harry W. Lindsey, Jr.

(Plaintiff's Exhibit 1—Agreement dated December 20, 1940—not copied here.)

10 And afterwards on, to wit, the 8th day of February, 1943, came the Defendants in Civil Action No. 4382 by their attorney and filed in the Clerk's office of said Court their certain Amended Answer to Amended and Supplemental Complaint, in words and figures following, to wit:

11 IN THE UNITED STATES DISTRICT COURT.
(Caption—4382)

AMENDED ANSWER OF DEFENDANTS TO
AMENDED AND SUPPLEMENTAL COMPLAINT.

Now Come Defendants and file this their joint and several Amended Answer to the Amended and Supplemental Complaint filed herein on November 30, 1942, alleging:

1. Defendants admit the allegations of Paragraph I.
2. Defendants admit the allegations of residence and citizenship in Paragraph II, but deny that either of Defendants has committed any act of infringement, and deny that Defendant Larson has a place of business as alleged.

12 3. Defendants admit the allegations of Paragraph III.

4. Defendants admit that Letters Patent No. 2,269,503 were issued to Plaintiff on January 13, 1942, but deny that they were duly and legally issued. Defendants are not informed as to the ownership of said Letters Patent and therefore deny Plaintiff's allegations with respect thereto.

Defendants deny that Reissue Letters Patent 22,219 were legally issued, and deny that there existed any statutory grounds for the reissue of Letters Patent No. 2,269,503.

5. Defendants admit that Letters Patent No. 2,279,792 were issued to Plaintiff on April 14, 1942, but deny that they were duly and legally issued. Defendants are not informed as to the ownership of said Letters Patent, and therefore deny Plaintiff's allegations with respect thereof. Defendants deny that claims 31 and 32 were legally allowed, and allege that said claims are not supported by the specification and do not comply with R. S. 4888 (U. S. Code, Title 35, sec. 33).

6. Defendants admit that Letters Patent No. 2,283,888 were issued to Plaintiff on May 19, 1942, but deny that they were duly and legally issued. Defendants are not informed as to the ownership of said Letters Patent, and therefore deny Plaintiff's allegations with respect thereto.

13 Defendants deny that claim 38 was legally allowed, and allege that said claim is not supported by the specification and does not comply with R. S. 4888 (U. S. Code, Title 35, sec. 33).

7. a. Defendants admit that they did, on December 20, 1940, sign the document attached to Plaintiff's Complaint as Exhibit 1, but Defendants allege that at the time of the signing thereof not one of the three patents sued on herein had issued and that the alleged subject matter of said alleged contract was not in existence or certain, wherefore there was no contract of the scope and effect asserted by Plaintiff. Defendants further allege that said agreement did not contemplate or embrace Reissue Letters Patent No. 22,219.

b. Defendants allege that the application for Letters Patent No. 2,279,792 (herein called Larson application) was, by the United States Patent Office declared to be in interference with the applications for Letters Patent Nos. 2,283,888 and 2,269,503 (herein called Zimmerman applications) in Interference No. 77,565, in which the question to be determined was whether the party Larson had invented the subject matter of certain counts of said Interference prior to the party Zimmerman; in October, 1940, testimony of several witnesses was taken under oath on behalf of the party Larson at Chicago, Illinois, before
14 Esther Meltzer, a Notary Public commissioned in the State of Illinois; Kenneth R. Larson, one of the witnesses,

did then and there knowingly falsely testify on his own behalf under oath, that he had invented and made a wrench embodying the subject matter of the counts then in interference in the year 1934, and that he had produced several models, which he identified, and a drawing which he identified as having been made prior to the summer of 1936, whereas in fact the wrenches, models, and drawings referred to had not been made until the years 1937 and 1938; the issues to which said testimony so directed were critical issues in the interference and the testimony was material to said issue; said testimony constituted perjury under the statutes of the United States (Title 18, U. S. Code, sec. 231), and of the State of Illinois (Chap. 38, Ill. Rev. Stat., sec. 473); Plaintiff and its agents were aware that said testimony was false, and charged said Larson with the crime of perjury and threatened to institute prosecution against said Larson unless Defendants transferred to Plaintiff the Larson application and the sum of \$500, and executed the agreement, Exhibit 1, and Plaintiff promised to withhold its complaint and suppress the evidence of said perjury if the Larson application and the sum of \$500 were transferred to Plaintiff and Defendants executed the agreement, Exhibit 1; whereupon in violation of law (Title 18, U. S. Code, sec. 250, 251; Chap. 38, Ill. Rev. Stat., sec. 135) Plaintiff did procure the transfer to it of the Larson application and the sum of \$500, and did procure the execution by Defendants of the agreement, Exhibit 1, and Plaintiff did thereafter suppress the evidence of said perjury and withhold making its complaint to the proper officers, and did thereby compound a crime in violation of the Statutes hereinabove referred to; wherefore said agreement, Exhibit 1, and the transaction of which it is a part, are unlawful, null, and void.

c. Defendants further allege that said agreement, Exhibit 1, includes a provision prohibiting Defendants from manufacturing and selling any torque wrenches, which are articles moving in interstate commerce, responding to the claims of the Letters Patent here in suit, and prohibits Defendants from contesting the validity of said patents, which prohibitions and covenants constitute restraints in violation of the Sherman Act (Title 15, U. S. Code, sec. 1) and are void unless sustained by valid patents; Defendants allege said patents are invalid and said agreement is, therefore void.

8. Defendants deny the allegations of Paragraph VIII and allege that Plaintiff has been unable to make commercially satisfactory and accurate wrenches following the teachings of the three patents sued on herein, and that the wrenches made under said patents are inferior to those made and sold by Defendant, Precision Instrument Manufacturing Company, and Defendants deny that there has been any acquiescence in the asserted validity of said Letters Patent, or any of them.

9. Defendants are without knowledge of whether Plaintiff has made, sold, or marked any wrenches under said Letters Patent, and Defendants therefore deny the allegation, and Defendants deny that Plaintiff has ever given Defendants notice of any alleged infringement of any of said Letters Patent except No. 2,279,792, of which Plaintiff wrote Defendants on April 18, 1942, except by institution of this suit on June 15, 1942, in which only Letters Patent Nos. 2,279,792 and 2,283,888 were sued on, and no charge of infringement of Letters Patent No. 2,269,503 was made until the Amended Complaint was filed herein on July 22, 1942. Defendants deny that they have been given notice of alleged infringement of Reissue Letters Patent No. 22,219.

10. Defendants deny the allegations of Paragraph X.

11. Defendants deny that they have committed any acts of infringement and that Defendant Kenneth R. Larson has acted in any other manner than as an officer and employee of the corporate Defendant, Precision Instrument Manufacturing Company, and except for the allegations that Defendant Kenneth R. Larson is a stockholder, original incorporator, officer, and director of the corporate Defendant, Defendants deny each allegation of Paragraph XI.

12. Defendants allege that Precision Instrument Manufacturing Company has, through its employees, perfected a resistance-measuring wrench which said company has subsequently manufactured and sold in large quantities, that said wrench embodies a new principle of design and operation never theretofore incorporated into a similar instrument, that Plaintiff has for many years without success sought to produce a satisfactory resistance-measuring wrench and has produced a large number of different designs of resistance-measuring wrenches upon which Plaintiff has procured a large number of patents in an effort to

prevent others from manufacturing a satisfactory resistance-measuring wrench; that when in October, 1941, Defendant Precision Instrument Manufacturing Company publicly offered its wrench, Plaintiff's attorneys procured a specimen thereof and, with this specimen before Plaintiff's attorneys, said attorneys drew patent claims designedly and deliberately phrased in ambiguous terms to 18 purport to embrace the Precision wrench, in violation of the Patent Act (Title 35, U. S. Code, sec. 33; R. S. 4888), which claims Plaintiff's attorneys inserted under Rule 78 of the United States Patent Office into the then pending and allowed applications which finally matured into United States Letters Patent Nos. 2,279,792 and 2,283,888, and subsequently Plaintiff unlawfully procured Re-issue Letters Patent No. 22,219, all for the sole purpose of procuring claims in said Letters Patent that might be sufficiently vague in terms as to appear to cover the resistance-measuring wrenches being made and sold by the corporate Defendant and to give color to this suit for alleged infringement, whereas Plaintiff and its attorneys well knew that said wrenches were not the invention of the applicants for said Letters Patent, but involved an entirely different principle of construction and operation.

13. Defendants allege that Plaintiff has, by the devices alleged in Paragraphs 7b, 7c, and 12 hereof, attempted to monopolize the manufacture and sale of resistance-measuring wrenches, which move in interstate commerce, and has sought to procure patents covering devices which were not the inventions of the applicants for patents into whose applications Plaintiff has inserted claims pretending to cover the inventions of others.

14. Defendants allege that Plaintiff, because of the matters alleged in Paragraphs 7b, 7c, 12, and 13 hereof, 19 as well as other inequitable conduct, comes into this Court with unclean hands and may not maintain this suit.

15. Defendants allege that the claims herein asserted against the resistance-measuring wrenches made and sold by the corporate Defendant herein, do not read upon said wrenches and are not infringed thereby because of the restricted meaning which must be given said claims in the light of the respective specifications of each of the Letters Patent sued upon, the amendments made to such claims, and the cancellations made of other claims during the

prosecution of the respective applications for said Letters Patent, and the existing art of resistance-measuring wrenches extant at the time of the alleged inventions of said Letters Patent and in part represented by the wrenches described in the following Letters Patent:

	Number	Date	Patentee
U. S.	78,604	June 2, 1868	O'Neil
	164,100	June 8, 1875	Plymale
	641,495	Jan. 9, 1900	Culmer et al.
	832,064	Oct. 2, 1906	Keeler
	1,294,171	Feb. 11, 1919	Rockwell
	1,512,192	Oct. 21, 1924	Benko
	1,664,776	Apr. 3, 1928	Heise
	1,728,552	Sept. 17, 1929	Kennedy et al.
	1,809,087	June 9, 1931	Watrous
	1,825,539	Sept. 29, 1931	Patton
	1,830,997	Nov. 10, 1931	Gumprich
	1,900,581	Mar. 7, 1933	Oliver
	1,925,219	Sept. 5, 1933	Weight.
	2,007,880	July 9, 1935	Sharp
	2,063,622	Dec. 8, 1936	Pfeiffer
	2,074,079	Mar. 16, 1937	Bahr et al.
	2,115,955	May 3, 1938	Johnson
	2,144,731	Jan. 24, 1939	Zimmerman
20.	2,159,354	May 23, 1939	Dunn
	2,159,373	May 23, 1939	Dunn
	2,167,720	Aug. 1, 1939	Kress
	2,171,872	Sept. 5, 1939	Zimmerman
	2,183,633	Dec. 19, 1939	Zimmerman
	2,190,966	Feb. 20, 1940	Zimmerman
	2,199,553	May 7, 1940	Zimmerman
	2,206,315	July 2, 1940	Zimmerman
	2,211,401	Aug. 13, 1940	Zimmerman
	2,231,240	Feb. 11, 1941	Zimmerman
	2,260,358	Oct. 28, 1941	Zimmerman
	2,279,792	Apr. 14, 1942	Larson
	2,283,707	May 19, 1942	Sturtevant
	2,283,888	May 19, 1942	Zimmerman
British	399,901	1933	Battio et al.
	423,477	1935	Salle
French	621,277	Sept. 11, 1926	Vergne

16. Defendants allege that the resistance-measuring wrench business of Precision Instrument Manufacturing

Company is wholly devoted to the supplying of wrenches to the armed forces of the United States, and the defense industry of the United States, and that said Precision wrenches are practically indispensable to the maintenance of aircraft, marine engines, and mechanized war equipment, and that the restraints which Plaintiff is attempting to impose upon Defendants and the interference with Precision's business which Plaintiff is causing by the maintenance of this suit will seriously impair the defense of the United States, and so outweighs any asserted injury that might befall Plaintiff if this suit were not maintained that this Court of Equity should deny Plaintiff all relief.

17. Defendants further allege that substantially all the resistance-measuring wrenches being made and sold by
21 Precision Instrument Manufacturing Company are being manufactured for the United States and its contracting agents, and that Plaintiff's only remedy for any alleged infringements of the Letters Patent sued upon herein by Precision's manufacture of such wrenches for the United States and its agents is by a suit against the United States in the Court of Claims.

18. Defendants further allege that when Plaintiff filed its application for Reissue Letters Patent No. 22,219, Defendant Precision Instrument Manufacturing Company had long been selling wrenches of the type accused in this suit, as Plaintiff well knew, which did not infringe any claim of the Letters Patent No. 2,269,503, which was subsequently reissued as Reissue No. 22,219, whereby Precision Instrument Manufacturing Company acquired intervening rights with respect to said Reissue Letters Patent, and cannot be held to infringe the claims thereof.

19. By the agreement, Plaintiff's Exhibit 1, pleaded by Plaintiff, Plaintiff licensed Defendant Precision Instrument Manufacturing Company, to make and sell six thousand (6,000) wrenches of the type then being made and sold by said Defendant in interstate commerce, which wrench was then not covered by any issued patent, and thereafter forbade Defendants from selling such wrenches, which are
22 articles moving in interstate commerce; wherefore said agreement is in restraint of trade under the Sherman Antitrust Act of the United States (Act of July 2, 1890, c. 647, 26 Stat. 209), and is illegal, as Plaintiff did not, at the time of the execution of said agreement, and does not now, have any valid United States Letters Patent which

would support a restraint in interstate commerce. The Letters Patent upon which Plaintiff has brought this suit are invalid and void on the grounds that:

(a) The alleged inventions claimed therein do not constitute invention but merely changes common to those skilled in the art of wrench manufacture.

(b) The claims relied upon by Plaintiff herein are vague, indefinite, and ambiguous, and do not particularly point out and distinctly claim the part, improvement, or combination which the respective applicant for each patent claims as his invention or discovery, as required by R. S. 4888.

(c) The alleged inventions claimed in each of the patents in suit do not constitute invention over the disclosures of the patents set forth in Paragraph 15 hereof.

(d) The alleged inventions claimed in each of the patents in suit were not patentable because they were patented or described, prior to the alleged invention thereof or more than two years before the filing of the respective applications therefor, in the patents enumerated in Paragraph 15 hereof, and, prior to the alleged invention thereof by patentees Zimmerman and Larson, were invented by the patentees of the patents enumerated in said Paragraph 15, who reside at the respective residences named in their respective patents; and said alleged inventions were prior to the alleged invention thereof, or more than two years before the filing of the respective applications therefor, invented by, known to, and publicly used and sold by Allen I. Dunn of Cedar Rapids, Iowa, Cedar Rapids Engineering Company of Cedar Rapids, Iowa, and Automotive Maintenance Machinery Company of North Chicago, Illinois.

(e) The alleged inventions claimed in claim 38 of Letters Patent No. 2,283,888 were not the inventions of Herman W. Zimmerman, who surreptitiously or unjustly obtained a patent therefor, but were in fact invented by Kenneth R. Larson of Des Plaines, Illinois, who was using reasonable diligence in adapting and perfecting the same.

20. Defendants allege that said Larson Patent No. 2,279,792 is invalid and void and this suit may not be maintained, because said patentee has claimed to be the original and first inventor of a material and substantial part of the thing patented of which he was not the original and first inventor, and that said patentee and his assignee have unreasonably neglected or delayed to enter a disclaimer as to

such parts of which patentee was not the original and first inventor.

Casper W. Ooms,
Attorney for Defendant.

February 8, 1943.

24 And afterwards on, to wit, the 1st day of March, 1943 came the Petitioner in Civil Action No. 4451 by its attorneys and filed in the Clerk's office of said Court its certain Third Amended Petition For Declaratory Decree, in words and figures following, to wit:

25 IN THE UNITED STATES DISTRICT COURT.
(Caption—4451)

THIRD AMENDATORY PETITION FOR
DECLARATORY DECREE.

To The Honorable, The Judges Of The United States District Court, For The Northern District Of Illinois:

Petitioner, praying for the declaration and other relief sought herein, respectfully shows:

(1) That, petitioner, Snap-on Tools Corporation, is a corporation organized under and existing by virtue of the laws of the State of Delaware, and having its principal place of business at Kenosha, Wisconsin.

(2) That, respondent, Automotive Maintenance Machinery Co., is, upon information and belief, a corporation organized under and existing by virtue of the laws of the State of Illinois, and having its principal place of business at North Chicago, Illinois.

(3) That petitioner and respondent are separately engaged in making or selling, among other things, wrenches for measuring the extent to which nuts or other fasteners are turned to retain parts together with any desired or predetermined degree of tightness, and that petitioner
26 and respondent appeal to the same customers and prospective customers for the sale of their respective nut turning load measuring wrenches.

(4) That an actual controversy exists between petitioner and respondent, in that respondent, asserting to be the owner of United States Letters Patents Nos. Re. 22,219

(and the original thereof 2,269,503), 2,279,792 and 2,283,888 issued January 13, 1942, April 14, 1942, and May 19, 1942 respectively, (proof of copies of these patents are hereby made and attached hereto as Exhibits 1, 2, and 3 for identification), on to-wit July 22, 1942 with respect to Letters Patent No. 2,269,503 instituted suit against petitioner's suppliers of the alleged infringing measuring wrenches; that the aforesaid Letters Patent No. 2,269,503 was surrendered to the Commissioner of Patents on to-wit January 24, 1942, and thereafter on to wit November 3, 1942 was reissued as Letters Patent No. 2,221,219; that on to wit April 18, 1942 with respect to Letters Patent No. 2,279,792 and on to wit July 7, 1942 with respect to Letters Patent No. 2,283,888, Respondent in writing charged petitioner with infringement of the aforesaid letters patents and violation of an agreement entered into between the parties on December 20, 1940, (a copy of said agreement being attached hereto and made a part hereof as Exhibit 4); that petitioner is the exclusive seller of measuring wrenches manufactured by the Precision Instrument Manufacturing Company of Des Plaines, Illinois, who has been charged to infringe and actually sued under all of the aforesaid letters patents, thereby creating a controversy with respect to all of the aforesaid letters patents in connection with measuring wrenches exclusively sold by the petitioner; that respondent is representing to customers of petitioner and prospective purchasers of petitioner's wrenches which include the agencies of the United States Government making purchases for the armed forces of the United States, that petitioner's aforesaid wrenches infringe the claims of said respondent's letters patents; and that respondent further represents to petitioner and to the customers and prospective customers, that they are infringing said respondent's patents and violating the patent statutes of the United States by the sale of petitioner's said wrenches, respondent thus endeavoring to prevent and restrict the sale and use of petitioner's said wrenches which are vital to the present armament program and equipment of the United States.

(5) That no suit has been instituted by the respondent against petitioner, charging infringement of the aforesaid letters patents, but upon information and belief respondent has made representations, wholly without foundation, to petitioner's customers and prospective customers, to the

effect that a patent suit is pending between respondent and petitioner, and that a cease and desist order will soon be issued by the courts against petitioner who no longer will be able to sell its aforesaid wrenches, which representations have interfered and are interfering with the lawful conduct of this petitioner and causing petitioner's customers to delay, if not altogether stop, the purchase of the aforesaid wrenches to the petitioner's great and irreparable damage and to the detriment of the armament program of the United States.

(6) The jurisdiction of this Court is based upon the fact that the actual controversy existing between petitioner and respondent arises under the patent laws of the United States, and is a question of whether or not the aforesaid wrenches sold or offered for sale by petitioner infringe said respondent's patents Nos. Re. 22,219 (and the original thereof 2,269,503), 2,279,792, and 2,283,888, and whether said patents are good and valid at law, questions which have been committed to the exclusive jurisdiction of the United States Courts.

(7) The jurisdiction of this Court as to the controversy existing between petitioner and respondent precipitated by the latter's written notice of petitioner's alleged violation of an existing agreement dated December 20, 1940 and predicated upon a patent application which eventuated into the aforesaid Letters Patent No. 2,279,792, is based upon diversity of citizenship of the respective parties and the amount involved exclusive of interest and costs, being in excess of three thousand dollars (\$3000.00); and that the declaratory decree of this Court can become effective only by further relief in the form of an injunction to restrain respondent from making said baseless assertions pending the litigation, and after this Court has held that said patents are wholly invalid or are not infringed by petitioner and the aforesaid contract has not been violated.

(8) That petitioner's aforesaid wrenches sold or offered for sale by petitioner do not incorporate or embody the elements disclosed and claimed in the respondent's patents Nos. Re. 22,219 (and the original thereof 2,269,503), 2,279,792, and 2,283,888 nor the principle of operation of the patented structures set forth and claimed in the aforesaid United States Letters Patents Nos. Re. 22,219 (and the original thereof 2,269,503), 2,279,792, and 2,283,888; therefore, petitioner does not infringe said patents, nor violate

the aforesaid agreement prescribing that petitioner would not after a specified time sell wrenches embodying the invention set forth in the aforesaid letters patent.

(9) That the claims herein asserted against the resistance measuring wrenches sold by the petitioner herein, do not read upon said wrenches and are not infringed, thereby because of the restricted meaning which must be given said claims in the light of the respective specifications, the amendments made to such claims and the cancellations of other claims made during the prosecution of the patent applications on which said letters patents Nos. Re. 22,219 (and the original thereof 2,269,503), 2,279,792 and 2,283,888 were issued, applicants for themselves and those claiming title through said respective applicants, were compelled by their respective self-defined conceptions and by the prior art recited in this petition and by their special procedure under Patent Office Rules 85 to 92 with respect to the reissue patent and Rule 78 with respect to the latter two patents, to so interpret and restrict the claims of said patents during the prosecution of said applications, that said claims became and are limited to a torque wrench containing or embodying a rockably mounted work engaging member or a torque resisting flexible beam or both of a particular type, mounting and movement constituting material limitations upon the invention not appearing or embodied in petitioner's entirely different wrench construction and principle of operation; that all the claims in their entirety as well as all of the elements of the claims of the respondent's patents Nos. Re. 22,219 (and the original thereof 2,269,503), 2,279,792 and 2,283,888 are so limited and confined in scope under the requirements imposed by the Commissioner of Patents that the respondent did not then and cannot now seek to obtain a construction for such claims sufficiently broad to cover any device made, used or sold by the petitioner; that all the claims which respondent procured in its reissue No. 22,219 (and the original thereof 2,269,503) as well as in its patents 2,279,792 and 2,283,888 under Rule 78 when construed and interpreted in the light of the original disclosure, are for an entirely different invention and structure than embodied in petitioner's measuring wrenches; and that the Patent Office so narrowly construed the claims of the aforesaid letters patents as not to invoke Rules 93 and 94 which would otherwise require the declara-

tion of an interference with petitioner's allowed pending patent application illustrating and claiming the complaining resistance wrenches sold by petitioner.

(10) Petitioner is informed and believes and therefore avers that each of the aforesaid letters patents are invalid and void for the reason that the alleged invention thereof purported to be patented thereby are not the same as were disclosed in the application therefor as originally filed, but are substantially different from any invention indicated, described, or suggested in the original applications therefor; that the applications therefor, were amended in the claims during the prosecution thereof and the alleged patented subject matter is not supported by oath as required by law; that said applications were unlawfully enlarged by law during the prosecution thereof; and that the claims in suit of said letters patents are invalid and void for the reason that they include matter not shown or adequately described in said patents.

(11) That claims 31 and 32 of respondent's aforesaid letters patent No. 2,279,792 are for an entirely different alleged invention than originally described and claimed in the patent application eventuating into the aforesaid letters patent up to the date that all the claims comprising 1 to 30 inclusive, were allowed and the prosecution thereof was deemed officially closed by the United States Patent Office; that, thereafter on to-wit February 17, 1942 the applicant's assignee through its attorney presented claims 31 and 32 in an amendment under Rule 78 of the United States Patent Office which practice only permits the presentation of claims of the same or more limited scope than those theretofore presented and the subject matter of which would not require an additional search, on the part of the Patent Office Examiner, but in spite of these restrictions and well knowing that claims 31 and 32 were for an entirely different structure and of much broader scope than the concept which was first disclosed and or described and or claimed in the application as originally filed for said letters patent, and these claims not being supported by the original oath, or by a supplemental oath, or by any oath whatsoever, or by a search at the instance of the Patent Office, are therefore void, invalid and of no effect.

(12) Petitioner further avers that claim 38 of respondent's aforesaid letters patent No. 2,238,888 is for an entirely different alleged invention than originally described

and claimed in the patent application eventuating into the aforesaid letters patent up to the date that all of the claims comprising 1 to 37 inclusive, were allowed and the prosecution thereof was deemed officially closed by the United States Patent Office; that, thereafter on to-wit April 2, 1942 the applicant's assignee through its Attorney presented claim 38 in an amendment under Rule 78 of the United States Patent Office which practice only permits the presentation of claims of the same or more limited scope than those theretofore presented and the subject matter of which would not require an additional search on the part of the Patent Office Examiner, but in spite of these restrictions and well knowing that claim 38 was for an entirely different structure and of much broader scope than the concept which was first disclosed and/or described and/or claimed in the application as originally filed for said letters patent, and this claim not being supported by the original oath, or by a supplemental oath, or by any oath whatsoever, or by a search at the instance of the Patent Office, is therefore void, invalid and of no effect.

(13) That the aforesaid claims referred to in paragraphs 11 and 12 supra together with claims 24 to 31 of Reissue Patent No. 22,219, as well as the subject matter thereof, were inserted by amendment in their respective patent applications more than two years after the respective patent applications therefore were originally filed in the United States Patent Office and more than two years after the prior public use and sale of the aforesaid patented structures by the herein petitioner and respondent; that petitioner and respondent sold measuring wrenches described and claimed in the aforesaid letters patents more than two years prior to the time the aforesaid claims were inserted by amendment in the respective patent applications eventuating into letters patents numbered 2,279,792 and 2,283,888 and Re. 22,219 respectively; and that the aforesaid inventions were also in public use and sale more than two years prior to the insertion of the aforesaid claims by the Cedar Rapids Engineering Co., of Cedar Rapids, Iowa, the J. H. Williams Co. of Buffalo, New York, P. A. Sturtevant Company of Addison, Illinois, and others their names and dates now being unknown to petitioner but prays leave to add by amendment to this petition or otherwise, when it has more fully ascertained the same.

(14) Petitioner further avers, on information and belief, that the said letters patent No. 2,279,792 is invalid and void for the reason that the said Kenneth R. Larson was not the original inventor, nor inventor at all, of the alleged invention or inventions the said letters patent purport to cover, but that said alleged invention and subject matter of said letters patent was acquired by Kenneth R. Larson from George Thomasma of 1121 Potter Road, Park Ridge, Illinois; and that the subject matter of said 33 letters patent No. 2,279,792 does not constitute the original sole invention of Kenneth R. Larson and not being in the name of the true inventor is, therefore, void, invalid, and of no force or effect.

(15) Petitioner, upon information and belief, further avers that letters patent No. 2,279,792 is invalid and of no force or effect, because the alleged invention of Kenneth R. Larson; but, upon information and belief, the joint contribution of the said Kenneth R. Larson and George Thomasma, the latter contributing and furnishing at least a substantial portion of the disclosure or teachings of the subject matter therein described and claimed; and the aforesaid letters patent 2,279,792 not being in the name of the true inventors is, therefore, void, invalid and of no force or effect.

(16) Petitioner alleges that said Larson patent No. 2,279,792 is invalid and void and this suit may not be maintained, because said patentee has claimed to be the original and first inventor of a material and substantial part of the thing patented of which he was not the original and first inventor and that said patentee and his assignee, the respondent to whom the aforesaid letters patent issued, have unreasonably neglected or delayed to enter a disclaimer as to such parts of which the patentee was not the original and first inventor.

(17) Petitioner alleges that its wrench now being sold in large quantities, embodies a few principle of design and operation never theretofore incorporated into a similar instrument; that respondent has for many years without success sought to produce a satisfactory resistance wrench and has produced a large number of different designs of resistance measuring wrenches upon which respondent has procured a large number of patents, in an effort to prevent others from manufacturing a satisfactory resistance measuring wrench; that when 34

in September, 1941, petitioner publicly offered its new wrench, respondent's attorneys procured a specimen thereof and with this specimen before respondent's attorneys said attorneys drew patent claims designedly and deliberately phrased in ambiguous terms to purport to embrace petitioner's wrench, in violation of the Patent Act (Title 35, U. S. Code, Sec. 33; R. S. 4888), which claims respondent's attorneys inserted under Rule 78 of the United States Patent Office into the then pending and allowed applications which finally matured into United States letters patents Nos. 2,279,792 and 2,283,888, and subsequently respondent unlawfully procured Reissue letters patent No. 22,219, all for the sole purpose of procuring claims in said letters patents that might be sufficiently vague in terms to appear to cover the resistance measuring wrenches being sold by petitioner and to give color to respondent's notice of infringement against petitioner and its suit for alleged infringement against the Precision Instrument Manufacturing Co., Civil Docket No. 4392, whereas respondent and its attorneys well knew that said wrenches were not the invention of the applications for said letters patent, but involved an entirely different principle of construction and operation not even remotely contemplated by the alleged inventions comprising the subject matter of letters patents Re. 22,219 (and the original thereof 2,269,503), and 2,279,792 and 2,283,888; that respondent has, by these devices and the fraudulent concealment of material facts, mislead the Patent Office into believing that claims 31 and 32 of letters patent No. 2,279,792 and claim 38 of letters patent No. 2,283,888 included under Rule 78 after the patent applications had been allowed and thus not subject to further examination, covered no more or did not involve a departure or were not of broader scope than the claims already allowed; instead of the Patent Office Examiner being informed as to the full purpose and scope intended to be ascribed to these claims in relation to petitioner's wrench which was then on public sale and in public use and whereon a patent application was then pending in the United States Patent Office, respondent avoided all reference to its present interpretation and precluded the proper consideration thereof by the Patent Office Examiner through the stress of repeated personal interviews and through the extraordinary practice under Rule 78 calling for no

further search and the consideration of only routine amendments by and through the practice of only cursory consideration provided for under this rule; that the respondent procured the allowance of these new and broadened claims constituting an unwarranted enlargement upon the original disclosure by the use of vague words having an ambiguous and dual meaning in connection with the subject matter of respondent's patent applications and petitioner's new wrench which was then in public use and on public sale; that respondent has unwarrantedly and without legal right attempted to monopolize the manufacture and sale of resistance measuring wrenches, which move in interstate commerce, and has sought by these tactics to procure patents covering devices which were not the inventions of the applicants for the aforesaid letters patents into whose applications respondent has inserted claims pretending to cover the inventions of others; and that
36 by virtue of these acts the respondent has thus conducted itself with unclean hands and is not entitled to any relief.

(18) That said reissue patent No. 22,219 (and the original thereof 2,269,503) and each and all of the claims thereof are wholly void because the alleged invention described and claimed therein, long prior to the patentee's alleged invention thereof, and more than two years prior to the filing of the application for the aforesaid letters patent, was in public use and sale and previously patented and/or described in previous publications, to-wit in the following:

United States Patents:

Number	Date	Patentee
78,604	June 2, 1868	O'Neil
164,100	June 8, 1875	Plymale
414,615	Nov. 5, 1889	Walker
641,195	Jan. 9, 1900	Culmer, et al.
832,064	Oct. 2, 1906	Keeler
1,048,488	Dec. 31, 1912	Blanchard, et al.
1,294,171	Feb. 11, 1919	Rockwell
1,512,192	Oct. 21, 1924	Benko
1,664,776	Apr. 3, 1928	Heise
1,685,916	Oct. 2, 1928	Hans, et al.
1,728,552	Sept. 17, 1929	Kennedy, et al.
1,800,087	June 9, 1931	Watrous

1,825,539	Sept. 29, 1931	Patton
1,830,997	Nov. 10, 1931	Gumprich
1,848,488	Mar. 8, 1932	Linendoll
1,900,581	Mar. 7, 1933	Oliver
1,925,219	Sept. 5, 1933	Weigt
2,007,880	July 9, 1935	Sharp
2,063,622	Dec. 8, 1936	Pfeiffer
2,074,079	Mar. 16, 1937	Bahr, et al.
2,144,731	Jan. 24, 1939	Zimmerman
2,159,354	May 23, 1939	Dunn
2,159,373	May 23, 1939	Dunn
2,167,720	Aug. 1, 1939	Kress
2,171,872	Sept. 5, 1939	Zimmerman
2,183,633	Dec. 19, 1939	Zimmerman
2,190,966	Feb. 20, 1940	Zimmerman
2,206,315	July 2, 1940	Zimmerman
2,211,401	Aug. 13, 1940	Zimmerman
2,115,955	May 3, 1938	Johnson
2,260,358	Oct. 28, 1941	Zimmerman
2,231,240	Feb. 11, 1941	Zimmerman
2,260,258	Oct. 28, 1941	Zimmerman
2,279,792	Apr. 14, 1942	Larson
2,283,707	May 19, 1942	Sturtevant
2,283,888	May 19, 1942	Zimmerman

37

Foreign Patents.

French—621,277	1927	Andre-Pierre
British—399,901	1933	Battio, et al.
British—423,477	1935	Salle

and others, the dates and patentees, authors and publishers of which the petitioner it now unable to supply but prays leave to add by amendment to this petition or otherwise, when it has more fully ascertained the same.

(19) That said patent No. 2,279,792 and each and all of the claims thereof are wholly void because the alleged invention described and claimed therein, long prior to the patentee's alleged invention thereof, and more than two years prior to the filing of the application for the aforesaid letters patent, was in public use and sale and previously patented and/or described in previous publications, to-wit in the following:

United States Patents.

Number	Date	Patentee
78,604	June 2, 1868	O'Neil
164,100	June 8, 1875	Plymale
414,615	Nov. 5, 1889	Walker
641,195	Jan. 9, 1900	Culmar, et al.
832,064	Oct. 2, 1906	Keeler
1,048,488	Dec. 31, 1912	Blanchard, et al.
1,294,171	Feb. 11, 1919	Rockwell
1,512,192	Oct. 21, 1924	Benko
1,685,916	Oct. 2, 1928	Hans, et al.
1,728,552	Sept. 17, 1929	Kennedy, et al.
1,809,087	June 9, 1931	Watrous
1,825,539	Sept. 29, 1931	Patton
1,830,997	Nov. 10, 1931	Gumprich
1,848,488	Mar. 8, 1932	Linendoll
1,900,581	Mar. 7, 1933	Oliver
1,925,219	Sept. 5, 1933	Weigt
2,007,880	July 9, 1935	Sharp
2,063,622	Dec. 8, 1936	Pfeiffer
2,074,079	Mar. 16, 1937	Bahr, et al.
2,115,955	May 3, 1938	Johnson
3,144,731	Jan. 24, 1939	Zimmerman
2,159,354	May 23, 1939	Dunn
2,159,373	May 23, 1939	Dunn
2,167,726	Aug. 1, 1939	Kress
2,171,872	Sept. 5, 1939	Zimmerman
2,183,633	Dec. 19, 1939	Zimmerman
2,190,966	Feb. 20, 1940	Zimmerman
2,206,315	July 2, 1940	Zimmerman
2,211,401	Aug. 13, 1940	Zimmerman
2,260,358	Oct. 28, 1941	Zimmerman
2,269,503	Jan. 13, 1942	Zimmerman
2,231,240	Feb. 11, 1941	Zimmerman
2,260,258	Oct. 28, 1941	Zimmerman
2,283,707	May 19, 1942	Sturtebant
2,283,888	May 19, 1942	Zimmerman

Foreign Patents.

French—621,277	1927	Andre-Pierre
British—399,901	1933	Battio, et al.
British—423,477	1935	Salle

and others; the dates and patentees, authors and publishers of which the petitioner is now unable to supply but prays leave to add by amendment to this petition or otherwise, when it has more fully ascertained the same.

(20) That said patent No. 2,283,888 and each and all of the claims thereof are wholly void because the alleged invention described and claimed therein, long prior to the patentee's alleged invention thereof, and more than two years prior to the filing of the application for the aforesaid letters patent, was in public use and sale and previously patented and/or described in previous publications, to-wit in the following:

United States Patents:

Number	Date	Patentee
78,604	June 2, 1868	O'Neil
164,100	June 8, 1875	Plymale
414,615	Nov. 5, 1889	Walker
641,195	Jan. 9, 1900	Culmer, et al.
832,064	Oct. 2, 1906	Keeler
1,043,488	Dec. 31, 1912	Blanchard, et al.
1,294,171	Feb. 11, 1919	Rockwell
1,512,392	Oct. 21, 1924	Benko
1,685,916	Oct. 2, 1928	Hans, et al.
1,728,552	Sept. 17, 1929	Kennedy, et al.
1,809,087	June 9, 1931	Watrous
1,825,539	Sept. 29, 1931	Patton
1,830,997	Nov. 10, 1931	Gumprich
1,848,488	Mar. 18, 1932	Linendoll
1,900,581	Mar. 7, 1933	Oliver
1,925,219	Sept. 5, 1933	Weigt
2,007,689	July 9, 1935	Sharp
2,063,622	Dec. 8, 1936	Pfeiffer
2,074,079	Mar. 16, 1937	Bahr, et al.
2,144,731	Jan. 24, 1939	Zimmerman
2,159,354	May 23, 1939	Dunn
2,159,373	May 23, 1939	Dunn
2,269,503	Jan. 13, 1942	Zimmerman
2,167,720	Aug. 1, 1939	Kress
2,171,672	Sept. 5, 1939	Zimmerman
2,183,633	Dec. 19, 1939	Zimmerman
2,190,966	Feb. 20, 1940	Zimmerman
2,296,345	July 2, 1940	Zimmerman

2,211,401	Aug. 13, 1940	Zimmerman
2,115,955	May 3, 1938	Johnson
2,260,358	Oct. 28, 1941	Zimmerman
2,231,240	Feb. 11, 1941	Zimmerman
2,269,258	Oct. 28, 1941	Zimmerman
2,279,792	Apr. 14, 1942	Larson
2,283,707	May 19, 1942	Sturtevant

Foreign Patents.

French—621,277	1927	Andre-Pierre
British—399,901	1933	Battio, et al.
British—423,477	1935	Salle

and others, the dates and patentees, authors and publishers of which the petitioner is now unable to supply but prays leave to add by amendment to this petition or otherwise, when it has more fully ascertained the same.

(21) Petitioner is informed and believes and therefor avers that the claims of each of the letters patent in suit are wholly invalid and void as each of said claims is directed to an old and well-known association of elements, and to old and well-known practices; patentably exhausted long prior to the inventions or improvements alleged to be covered by said claims, and further that the claims of each of said patents in suit are wholly invalid and void as the same are for unpatentable aggregations as distinguished from patentable combinations.

(22) That said patent No. 2,279,792 and each and all of the claims thereof are wholly void in view of the state of the art at the time of the patentee's alleged invention was not patentable, but involved nothing more than the exercise of mechanical skill; that the essential and only differences between the device of the aforesaid patent and the prior art devices lies in the fact that the torque resisting flexible beam, mounting and movement of the patent construction differs from the prior art in mechanical detail only to acquire compactness; and that said differences constitute a mere variation of the devices of the prior art such as shown in United States letters patents Nos. 2,269,503 and 2,283,888 issued January 13, 1942 and May 19, 1942, respectively, to Herman W. Zimmerman's assignee, the respondent, on applications which were involved in interference with and were awarded priority of invention over the Larson patent application serially

numbered 232,723 which eventuated into the aforesaid Larson patent No. 2,279,792 issued to respondent as assignee.

(23) That said patent No. 2,283,888 and each and all of the claims thereof are wholly void in view of the state of the art at the time of the patentee's alleged invention was not patentable, but involved nothing more than the exercise of mechanical skill; that the essential and only differences between the device of the aforesaid patent and the prior art devices lies in the fact that the torque resisting flexible beam, mounting and movement of the patented construction differs from the prior art in mechanical detail only to acquire compactness; and that said differences constitute a mere variation of the devices of the prior art such as shown in United States letters patent No. 2,269,503.

(24) That claims 31 and 32 of letters patent No. 2,279,792 are substantially coextensive with claim 38 of letters patent No. 2,283,888; that by reason thereof respondent urges that said letters patents and particularly the aforesaid claims thereof are void for double patenting; that the claims of letters patent 2,283,888 are substantially coextensive with the claims of letters patent Re. 22,219 41 (and the original thereof No. 2,269,503) and by reason thereof, letters patent No. 2,283,888 is void for double patenting in view of the prior issue of letters patent No. 2,269,503.

(25) Petitioner further alleges, upon information and belief, that since the insertion of claims 31 and 32 in the aforesaid patent No. 2,279,792 and claim 38 in the aforesaid patent No. 2,283,888 and prior to respondent's filing of amendments under rule 78 including the aforesaid claims, in the respective patent applications, petitioner sold its present wrenches upon the market since September of the year 1941, and that by reason thereof respondent had knowledge of petitioner's commercial sale of the aforesaid wrenches; and that by reason of such priority, the respondent is precluded and estopped from asserting any claim whatsoever against the petitioner under claims 31 and 32 of letters patent 2,279,792 and claim 38 of letters patent 2,283,888 which in truth and in fact are for an invention entirely different from that theretofore disclosed and claimed in the applications eventuating into the aforesaid letters patents.

(26) That claims 31 and 32 of the aforesaid letters

patent No. 2,279,792 and claim 38 of the aforesaid letters patent No. 2,283,888, were inserted by amendment under rule 78 and constitute new matter submitted after the close of the prosecution of the aforesaid patent applications; and that said new matter is not part of the original disclosure, description or claims as originally filed; and that said claims 31 and 32 and claim 38 of the respective aforesaid letters patents attempt to cover an improvement not contemplated by subject matter of the applications eventuating into United States letters patent Nos. 2,279,792 and 2,283,888 as originally filed; that in truth and in fact, claims 31-32 and claim 38 attempt to define a new development commercially sold on the market 42 by petitioner long prior to the insertion of these claims by amendment under rule 78 as a part of the applications eventuating into United States letters patent Nos. 2,279,792 and 2,283,888; and by reason of these facts, the prior commercial exploitation of the aforesaid wrenches upon the market by the petitioner constitutes an estoppel upon the respondent to assert any rights under these claims, and petitioner possesses intervening rights which are superior thereto unless said claims are given a construction limited to a flexible torque resisting beam.

(27) That the application which eventuated into the aforesaid letters patent No. 2,279,792 was on to-wit September 28, 1938 pledged to petitioner as security for the performance of a certain understanding between it and the applicant named in the aforesaid letters patent No. 2,279,792; that said application for letters patent was pledged to petitioner in accordance with the terms of a written preliminary agreement dated September 28, 1938, (a copy of said agreement between Kenneth R. Larson and petitioner being attached hereto and marked Exhibit 5); that the aforesaid preliminary agreement never was reduced to a formal agreement as originally contemplated under the terms thereof; that the agreement dated December 20, 1938 between petitioner and respondent was predicated upon petitioner's limited title to the aforesaid application serial number 232,723 involved in the last named agreement between petitioner and Kenneth R. Larson dated September 28, 1938 (Exhibit 5) per recitation thereof in the second paragraph on page two of the Exhibit 4 agreement; that under the exhibit 4 agree-

ment, the petitioner released to Kenneth R. Larson and the Precision Instrument Mfg. Co., the pledge of application serially numbered 232,723; which eventuated into the aforesaid letters patent No. 2,279,792; and that 43 by reason of being a mere pledgee of application serially numbered 232,723, petitioner nevertheless deems itself entitled to contest the validity of the aforesaid letters patent No. 2,279,792.

(28) That petitioner has complied with all the terms set forth in the aforesaid Exhibit 4 contract and performed fully thereunder to the end that the terms thereof have been fully executed by the petitioner; that petitioner has not violated the aforesaid patents nor breached the terms of the aforesaid contract by reason of the fact that its present measuring wrenches are entirely new in principle, function, and construction to the end that such constitutes an important advance in the art of nut turning load measuring wrenches; that said improvement embodied in petitioner's wrenches is not contemplated or covered by any or all of the aforesaid letters patents or contract or both, and the respondent well knowing these premises, has unwarrantedly threatened petitioner and its customers to the irreparable wrong, injury and damage of petitioner.

(29) Petitioner further alleges that claims 31 and 32 of the aforesaid Larson patent No. 2,279,792, and claim 38 of the aforesaid Zimmerman patent No. 2,283,888 are void in failing to "particularly point out and distinctly claim the part, improvement or combination" which the respective applicants therefor claimed as their respective inventions as required by R. S. Section 4888, and said claims are broader than the alleged invention.

(30) Petitioner alleges that the application eventuating into Letters Patent No. 2,279,792, was declared by the United States Patent Office to be in interference with the applications for Letters Patent Nos. 2,283,888, and 2,269,503; that said interference was identified in the United States Patent Office as No. 77,565 and was a proceeding in which the question to be determined was 44 whether or not the party Larson had invented the subject matter of certain counts of said interference prior to the party Zimmerman; that pursuant thereto, in October, 1940, testimony of Larson and several witnesses in behalf of Larson was taken under oath at Chicago,

Illinois, before Esther Meltzer, a Notary Public commissioned in the State of Illinois; that Kenneth R. Larson, one of the witnesses, did then and there falsely testify on his own behalf under oath that he had invented and made a wrench embodying the subject matter of the counts then in interference in the year 1934, and that he had produced several models which he identified, and a drawing which he testified as having been made prior to the summer of 1936, whereas in fact the wrenches, models, and drawings referred to had not been made until the years 1937 and 1938; that the issues to which said testimony was so directed were critical issues in the interference and the testimony was material to said issues; that said testimony constituted perjury under the statutes of the United States (Title 18 U. S. Code, Section 231) and of the State of Illinois (Chapter 58, Ill. Rev. Stat., Section 473); that respondent and its agents were aware that said testimony and evidence were false, and charged said Larson with the crime of perjury and threatened to institute prosecution against said Larson unless Larson and the Precision Instrument Manufacturing Co. transferred to respondent the Larson patent application and the sum of Five Hundred (\$500.00) Dollars and executed the agreement identified herein as Exhibit 6 and in consideration thereof respondent promised to withhold its information and complaint and, further, would suppress the evidence of said perjury; that the said Larson patent application and certain rights thereunder were at that time held by 45 petitioner under an agreement attached hereto and identified as Exhibit 5; that in order to procure Larson's release under the Exhibit 5 agreement from petitioner, respondent also threatened petitioner and its attorney who was then acting as attorney for Larson in the aforesaid interference, with the crime of possessing and concealing knowledge of the commission of said perjury by Larson and others in his behalf (Title 18 U. S. Code, Section 250, 251) and with action for alleged civil and criminal conspiracy to defraud and damage respondent by unwarrantedly delaying the issuance of its patents with perjured testimony and evidence fostered or intended to be fostered upon the Patent Office; that notwithstanding the fact that petitioner and its attorney had no knowledge that the said testimony and evidence by and on behalf of Larson was not the whole truth until so informed

by respondent's attorneys, the latter nevertheless continued its threats of prosecution against petitioner, its attorney, Larson and others; that said threats were repeated to a point that petitioner was coerced to cooperate with Larson and Precision Instrument Mfg. Co. and to subscribe to the respondent's terms that were simultaneously tendered in the form of the Exhibit 4 and 6 contracts; that said contracts were subscribed to by petitioner and Larson together with the Precision Instrument Manufacturing Co., in consideration of respondent's promise to suppress all causes of action against petitioner and the crime of perjury against Larson; that petitioner, Larson and the Precision Instrument Mfg. Co. being under duress, coercion, and persistent threats of respondent and its attorneys, reluctantly and without any freedom of action complied with the terms and conditions under which said crime of perjury would be suppressed; whereupon in violation of the law (Title 18 U. S. Code, Section 250, 251; Chapter 38 H. Rev. Stat., Section 135), respondent did procure the transfer to it of the Larson application and the sum of Five Hundred (\$500.00) Dollars and the other covenants contained in exhibits 4 and 6 notwithstanding that the interference involved only a part of the subject matter of said Larson patent application and none of the restrictions imposed in said agreements Exhibits 4 and 6; and through duress, coercion and the force of threats respondent did procure the execution by petitioner, Precision Instrument Mfg. Co. and Larson of the agreements Exhibits 4 and 6, and did thus compel the cancellation between petitioner and Larson of the agreement Exhibit 5 contrary and in violation of the terms thereof; respondent did thereafter suppress the evidence of said perjury and withheld making its information and complaint to the proper officers, and did thereby compound a crime in violation of the statutes hereinabove referred to; that the contracts comprising petitioner's Exhibit 4 and intervenor's Exhibit 6 were one and the same transaction evidenced by separate documents prepared and presented at the same time by respondent's attorneys and executed severally by the petitioner and intervenor at the special insistence and request of respondent; wherefore said agreements, Exhibits 4 and 6, and the transactions of which they are a part, are jointly and severally unlawful, null and void.

31. Petitioner further alleges that when respondent filed its application for Reissue Letters Patent No. 22,219, petitioner had long been selling wrenches of the type accused in this suit, as respondent well knew, which did not infringe any claim of the Letters Patent 2,269,503; that was subsequently reissued as Reissue No. 22,219, 47 whereby petitioner acquired intervening rights with respect to said Reissue Letters Patent and cannot be held to infringe the claims thereof.

32. Petitioner further alleges that Reissue Letters Patent No. 22,219 was not legally issued in that there existed no statutory grounds for the surrender and the reissue of Letters Patent No. 2,269,503; that the claims of Reissue Patent No. 22,219 are an undue enlargement upon the claims originally presented in letters patent 2,269,503; and that the claims of said reissue patent seeking to cover any type of measuring wrench embodying a shock absorbing flexible element that is normally unflexed, was not the invention of the patentee Zimmerman named therein, but was a mechanical detail suggested by George M. Walraven employed by petitioner in its engineering department, with whom the patentee Zimmerman had frequent contact; therefore, said reissue is void for each or all of the aforesaid reasons.

33. Petitioner further alleges that while it signed the document attached hereto as Exhibit 4 on to wit, December 20, 1940, not one of the three patents involved herein had issued; that the subject matter of said alleged agreement was not in existence or certain at the time of its execution, wherefore there was no contract of the scope and effect asserted by respondent; and that said agreement did not contemplate or embrace Reissue Letters Patent No. 22,219 or any other subject matter that constituted an enlargement upon the claims or the scope of the disclosure then contained in the applications for letters patents upon which the Exhibit 4 agreement was predicated.

34. Petitioner further alleges that by the agreements, petitioner's Exhibits 4 and 6, respondent licensed petitioner to sell six thousand (6000) wrenches of the type then being made and sold by said defendant in interstate commerce, which wrench was then not covered by any 48 issued patent, and thereafter forbade petitioner from selling such wrenches, which are articles moving in

interstate commerce; wherefore said agreement is in restraint of trade under the Sherman Anti-trust Act of the United States (Act of July 2, 1890, C. 647, 26 Stat. 209), and is illegal, as respondent did not, at the time of the execution of said agreement, and does not now, have any valid United States Letters Patent which would support a restraint in interstate commerce. The Letters Patents upon which respondent has notified petitioner of infringement and otherwise has created a controversy thereon, are invalid and void on the grounds that:

(a) The alleged inventions claimed therein do not constitute invention but merely changes common to those skilled in the art of wrench manufacture.

(b) The claims relied upon by respondent herein are vague, indefinite, and ambiguous, and do not particularly point out and distinctly claim the part, improvement, or combination which the respective applicant for each patent claims as his invention or discovery, as required by R. S. 4888.

(c) The alleged inventions claimed in each of the patents in suit do not constitute invention over the disclosures of the patents set forth in Paragraph 18 hereof.

(d) The alleged inventions claimed in each of the patents in suit were not patentable because they were patented or described, prior to the alleged invention thereof or more than two years before the filing of the respective applications therefor, in the patents enumerated in Paragraph 18 hereof, and, prior to the alleged invention thereof by patentees Zimmerman and Larson, were invented by the patentees of the patents enumerated in said Paragraph 18, who reside at the respective residences named in their respective patents; and said alleged inventions were prior to the alleged invention thereof, or more than two years before the filing of the respective applications therefor,

49 by, known to, and publicly used and sold by Allen F. Dunn of Cedar Rapids, Iowa, Cedar Rapids Engineering Company of Cedar Rapids Iowa, and Automotive Maintenance Machinery Company of North Chicago, Illinois.

(e) The alleged inventions claimed in Claim 38 of Letters Patent No. 2,283,888 were not the inventions of Herman W. Zimmerman, who surreptitiously or unjustly obtained a patent therefor, but were in fact invented by Kenneth R. Larson of Des Plaines, Illinois, who was using reasonable diligence in adapting and perfecting the same.

Wherefore, being without an adequate remedy at law, your petitioner prays:

(a) that a writ under the seal of this Court be issued, directed to respondent, requiring it to appear and make answer to this petition or complaint, and to perform and abide by such further orders and decrees as this Court may make; and

(b) that a declaratory decree be entered herein, adjudging said respondent's reissue patent No. 22,219 (and the original thereof 2,269,503) and Nos. 2,279,792 and 2,283,888 and each and all of the claims thereof, to be invalid, and also that none of the said claims in all of the aforesaid letters patents is infringed by said measuring wrenches sold by petitioner.

(c) that respondent be enjoined, both temporarily and permanently, from suing or sending any threats of suit or infringement notices to customers or prospective customers of petitioner, charging that its said measuring wrenches infringe either or any of the claims of said patents Nos. Re. 22,219 (and the original thereof 2,269,503), 2,279,792, and 2,283,888 and from making any false or unfounded statements respecting the alleged infringement of said patents by petitioner or any statement or statements to the effect that the petitioner has been ordered to cease to sell said devices or that petitioner has violated the aforesaid contract dated December 20, 1941.

(d) that respondent be decreed not to be the owner of Larson patent No. 2,279,792; that the contracts appended hereto as Exhibits No. 4 and 6 be declared null and void; that the re-assignment of title in and to the patent application which eventuated into the aforesaid letters patent No. 2,279,792 from petitioner to Precision Instrument Mfg. Co. and Kenneth R. Larson and the assignment of said title from the latter to respondent in accordance with the terms of the contracts appended hereto as Exhibits Nos. 4 and 6, be declared null and void; that respondent be ordered to execute a quit claim deed of assignment to petitioner for any interest respondent might claim to have in the aforesaid letters patent No. 2,279,792; and that petitioner be decreed to be the owner of the aforesaid Larson patent No. 2,279,792 under the terms of the contract appended hereto as Exhibit No. 5.

(e) that respondent be enjoined from instituting suits under Larson patent No. 2,279,792 and Zimmermann patents

No. Re. 22,219 (and the original thereof 2,269,503) and 2,283,888, because of the unclean hands of respondent in procuring said patents and enlarging upon the content thereof in violation of the statutes and by methods condemned in equitable proceedings.

(f) that respondent be decreed to pay the costs of this proceeding, including a reasonable attorney's fee to petitioner; and

51 (g) that petitioner may have such further and other relief in the premises as to this Court may seem meet.

Snap-On Tools Corporation,

By Harry C. Alberts,

Harry C. Alberts,

Its Attorney.

38 S. Dearborn St.

Chicago, Illinois.

State of Illinois {
County of Cook } ss:

Harry C. Alberts, being first duly sworn, deposes and says that he is the attorney of Snap-on Tools Corporation, the petitioner named in the foregoing petition; that he has prepared the foregoing petition and knows the contents thereof; and that the same is true of his own knowledge, except as to matters herein stated to be alleged on information and belief, and as to those matters he believes them to be true.

Harry C. Alberts,

Harry C. Alberts,

Subscribed and sworn to before me this 26th day of February, 1943.

(Seal)

Erma Fine,
Notary Public.

(Exhibits 1, 2, 3, 4, 5 and 6 attached not copied.)

52 And afterwards on, to wit, the 10th day of March, 1943, came the Respondent in Civil Action No. 4451 by its attorneys and filed in the Clerk's office of said Court its certain Answer to Third Amended Petition for Declaratory Decree in words and figures following, to wit:

53 IN THE UNITED STATES DISTRICT COURT.
(Caption—4451)

ANSWER TO THIRD AMENDED PETITION FOR
DECLARATORY DECREE.

For Answer to the Third Amended Petition of the petitioner, Snap-On Tools Corporation, in the above-entitled cause, respondent, Automotive Maintenance Machinery Co., says:

1. Respondent admits the allegations contained in paragraph (1) of the Third Amended Petition.

2. Respondent admits the allegations contained in paragraph (2) of the Third Amended Petition.

54 3. Answering paragraph (3) of the Third Amended Petition, respondent admits that it is engaged in making and selling wrenches, known as torque measuring wrenches, for measuring the extent to which nuts or other fasteners are turned to retain parts together with any desired or predetermined degree of tightness, and that petitioner is engaged in the sale of wrenches of the kind stated, but that respondent is without knowledge or information sufficient to form a belief as to the truth of the other allegations contained in said paragraph, and, therefore, leaves the petitioner to its proof thereof.

4. Answering paragraph (4) of the Third Amended Petition, respondent admits that an actual controversy exists between petitioner and respondent; that respondent is, and is asserting itself to be, the owner of United States Letters Patent Nos. Re. 22,219 (and the original thereof No. 2,269,503), 2,279,792 and 2,283,888, issued November 3, 1942, April 14, 1942 and May 19, 1942, respectively; that on July 22, 1942 respondent instituted suit against Precision Instrument Manufacturing Company, petitioner's supplier of the alleged infringing measuring wrenches with respect to Letters Patent No. 2,269,503; that said Letters Patent No. 2,269,503 was surrendered to the Commissioner of Patents and on November 3, 1942 was reissued as Letters Patent No. 22,219; that on April 18, 1942, with respect to Letters Patent No. 2,279,792, on July 3, 1942 with respect to Letters Patent No. 2,283,888, on July 31, 1942 with respect to Letters Patent No. 2,269,503, and on November 4, 1942 with respect to Letters Patent No. Re. 22,219,

in writing charged petitioner with infringement of said Letters Patent, respectively, and violation of an agreement entered into between respondent and petitioner on December 20, 1940 (a copy of which agreement is attached to petitioner's Third Amended Petition as Exhibit 4); and that respondent has represented to petitioner, and still so represents, that it has been and still is infringing respondent's said Letters Patent Nos. Re. 22,219 (and the original thereof No. 2,269,503), 2,279,792 and 2,283,888, and violating said agreement of December 20, 1940.

Further answering paragraph (4) of the Third Amended Petition, respondent avers that on June 15, 1942, prior to the filing of petitioner's original petition herein, it filed in this Court, under Civil Action No. 4382, a complaint against Precision Instrument Manufacturing Company of Des Plaines, Illinois, intervenor herein, and others, charging, inter alia, infringement of respondent's Letters Patent Nos. 2,279,792 and 2,283,888 and praying for injunctive relief and for an accounting of profits and damages, etc.; that on July 22, 1942, in said Civil Action No. 4382, respondent filed an amended complaint charging said defendants therein with infringement of respondent's Letters Patent No. 2,269,503 in addition to infringement of said Letters Patent Nos. 2,279,792 and 2,283,888, and praying additional relief for infringement thereof; that on November 30, 1942, in said Civil Action No. 4382, respondent filed an amended and supplemental complaint charging defendants therein with infringement of respondent's Letters Patent No. Re. 22,219 (and the original thereof No. 2,269,503) in addition to infringement of said Letters Patent Nos. 2,279,792 and 2,283,888, and praying additional relief for infringement thereof; and, therefore,

respondent admits that Precision Instrument Manufacturing Company has been charged to infringe and has actually been sued under respondent's Letters Patent Nos. Re. 22,219 (and the original thereof No. 2,269,503), 2,279,792 and 2,283,888, but denies each and every other allegation contained in said paragraph and not hereinabove expressly admitted.

5. Answering paragraph (5) of the Third Amended Petition, respondent admits that no suit has been instituted by the respondent against petitioner charging infringement of said Letters Patent Nos. Re. 22,219 (and the original

thereof No. 2,269,503), 2,279,792 and 2,283,888 but denies each and every other allegation contained in said paragraph.

6. Answering paragraph (6) of the Third Amended Petition, respondent admits that the jurisdiction of this Court is based upon the fact that the actual controversy existing between petitioner and respondent arises under the patent laws of the United States, and is a question of whether or not the aforesaid wrenches sold or offered for sale by petitioner infringe respondent's said patents Nos. Re. 22,219 (and the original thereof No. 2,269,503), 2,279,792 and 2,283,888, but denies that there is a question whether said patents are good and valid at law, and specifically denies that petitioner has the right to question or contest in any manner the validity of any of the claims of any of said Letters Patent.

7. Answering paragraph (7) of the Third Amended Petition, respondent admits that the jurisdiction of this Court as to the controversy existing between petitioner and respondent precipitated by respondent's written notice of petitioner's alleged violation of an existing agreement dated December 20, 1940, and predicated in part upon a patent application which matured into the aforesaid Letters Patent No. 2,279,792 is based upon diversity of citizenship of the respective parties and the amount involved exclusive of interest and costs, being in excess of Three Thousand Dollars (\$3000.00).

Further answering paragraph (7) of the Third Amended Petition, respondent affirmatively avers that said agreement dated December 20, 1940, is also predicated in part upon patent applications which eventuated in Letters Patent Nos. Re. 22,219 (and the original thereof No. 2,269,503) and 2,283,888, included in petitioner's Third Amended Petition filed herein.

Further answering paragraph (7) of the Third Amended Petition, respondent denies each and every allegation contained in said paragraph and not hereinabove expressly admitted, and specifically denies that said agreement of December 20, 1940, is based solely on the patent application eventuating into said Letters Patent No. 2,279,792, denies that respondent has made any baseless assertions or will make any baseless assertions pending the litigation, denies that said patents are invalid, denies that said patents are not infringed by petitioner, denies that said contract of December 20, 1940 has not been violated, and

further specifically denies that petitioner has the right to question or contest the validity of said Letters Patent Nos. Re. 22,219 (and the original thereof No. 2,269,503), 2,279,792 and 2,283,888, or any of them.

58 8. Respondent denies each and every allegation contained in paragraph (8) of the Third Amended Petition, except respondent admits that said agreement prescribes that petitioner would not after a specified time sell wrenches embodying the inventions set forth in the aforesaid Letters Patent Nos. Re. 22,219 (and the original thereof No. 2,269,503), 2,279,792 and 2,283,888.

9. Respondent denies each and every allegation contained in paragraph (9) of the Third Amended Petition, except respondent admits that the United States Patent Office did not declare an interference between said Letters Patent Nos. Re. 22,219 (and the original thereof No. 2,269,503), 2,279,792 and 2,283,888 and any application owned by petitioner and purporting to illustrate and claim the accused wrench in suit.

10. Respondent denies each and every allegation contained in paragraph (10) of the Third Amended Petition, and further specifically denies that petitioner has the right to question or contest in any manner the validity of said Letters Patent Nos. Re. 22,219 (and the original thereof No. 2,269,503), 2,279,792 and 2,283,888, or any of them.

11. Answering paragraph (11) of the Third Amended Petition, respondent admits that the claims constituting claims 31 and 32 of said Larson patent No. 2,279,792 were presented by it, through its attorneys, in the application eventuating in said patent No. 2,279,792 by an amendment under Rule 78 of the United States Patent Office, and admits that no supplemental oath was filed in support of said claims 31 and 32; but respondent denies that a supplemental oath was required or necessary for support of said claims 31 and 32 and further denies each and every other allegation contained in said paragraph, and further specifically denies that petitioner has the right to question or contest in any manner the validity of said patent No. 2,279,792.

12. Answering paragraph (12) of the Third Amended Petition, respondent admits that the claim constituting claim 38 of said Zimmerman patent No. 2,283,888 was presented by it, through its attorneys, in the application

eventuating in said patent No. 2,283,888 by an amendment under Rule 78 of the United States Patent Office, and admits that no supplemental oath was filed in support of said claim 38; but respondent denies that a supplemental oath was required or necessary for support of said claim 38 and further denies each and every other allegation contained in said paragraph, and specifically denies that petitioner has the right to question or contest in any manner the validity of said patent No. 2,283,888.

13. Answering paragraph (13) of the Third Amended Petition, respondent admits that claims 31 and 32 of Letters Patent No. 2,279,792 and claim 38 of Letters Patent No. 2,283,888 were inserted by amendment in their respective patent applications more than two years after the re-

60 spective patent applications therefor were filed in the United States Patent Office and further admits that claims 24 to 31 of Letters Patent No. 2,219 were inserted in the application for reissue more than two years after the original application was filed; but respondent denies each and every other allegation contained in paragraph (13) and further specifically denies that petitioner has the right to question or contest in any way the validity of said patents Nos. Re. 2,219 (and the original thereof No. 2,269,503), 2,279,792 and 2,283,888 or any of them.

14. Respondent denies each and every allegation contained in paragraph (14) of the Third Amended Petition, and further specifically denies that petitioner has the right to question or contest in any manner the validity of said patent No. 2,279,792.

15. Respondent denies each and every allegation contained in paragraph (15) of the Third Amended Petition, and further specifically denies that petitioner has the right to question or contest in any manner the validity of said patent No. 2,279,792.

16. Respondent denies each and every allegation contained in paragraph (16) of the Third Amended Petition, and specifically denies that respondent's Letters Patent No. 2,279,792 is invalid and void by reason of the fact

61 that the patentee Larson and his assignee, the respondent, have failed to enter a disclaimer of the thing patented, and further specifically denies that petitioner has the right to question or contest in any manner the validity of said patent No. 2,279,792.

17. Answering paragraph (17) of the Third Amended

Petition, respondent admits that it has produced a number of different designs of resistance measuring wrenches and has procured patents covering the same; admits that its attorneys inserted certain claims under Rule 78 of the United States Patent Office in the applications which terminated in the patents Nos. 2,279,792 and 2,283,888 in suit; but denies each and every other allegation contained in said paragraph (17) and specifically denies that petitioner has the right to question the validity of said Letters Patent Nos. Re. 22,219, 2,279,792 and 2,283,888 on the grounds that said Letters Patent were obtained through and by means of fraudulent concealment of material facts or by misleading the Patent Office in respect to claims allowed therein; further specifically denies that the matters alleged in said paragraph (17) constitute nuclear frauds; and further specifically denies that petitioner has the right to question or contest in any manner the validity of said Letters Patent Nos. Re. 22,219 (and the original thereof No. 2,269,503), 2,279,792 and 2,283,888, or any of them.

18. Respondent denies each and every allegation contained in paragraphs (18), (19) and (20) of the Third Amended Petition; and respondent further specifically denies that petitioner has the right to question or contest in any manner the validity of said Letters Patent Nos. Re. 22,219 (and the original thereof No. 2,269,503), 2,279,792 and 2,283,888, or any of them.

19. Respondent denies each and every allegation of paragraph (21) of the Third Amended Petition, and specifically denies that petitioner has the right to question or contest in any manner the validity of said patents Nos. Re. 22,219 (and the original thereof No. 2,269,503), 2,279,792 and 2,283,888, or any of them.

20. Answering paragraph (22) of the Third Amended Petition, respondent admits that the applications eventuating into said Zimmerman Letters Patent Nos. 2,269,503 (and the reissue thereof No. Re. 22,219) and 2,283,888 and the application eventuating into said Larson Letters Patent No. 2,279,792 were involved in an interference and that priority of invention was awarded to Herman W. Zimmerman, but denies each and every other allegation contained in paragraph (22) of the Third Amended Petition, and further specifically denies that petitioner has the right to question or contest in any manner the validity of said Letters Patent No. 2,279,792.

21. Respondent denies each and every allegation con-

tained in paragraph (23) of the Third Amended Petition, and specifically denies that petitioner has the right to question or contest in any manner the validity of said patent No. 2,283,888.

63 22. Respondent denies each and every allegation contained in paragraph (24) of the Third Amended Petition, and specifically denies that petitioner has the right to question or contest in any manner the validity of said patents Nos. 2,279,792 and 2,283,888, or either of them.

23. Answering paragraph (25) of the Third Amended Petition, respondent admits that petitioner has sold its present wrenches upon the market since the insertion of claims 31 and 32 in said patent No. 2,279,792 and claim 38 in said patent No. 2,283,888, but respondent is without knowledge and information sufficient to form a belief as to the truth of the allegations that prior to respondent's filing of amendments under Rule 78 including the aforesaid claims, in the respective patent application, petitioner sold its present wrenches upon the market since September 1941 and, therefore, denies said allegations and leaves petitioner to its proof thereof.

Further, answering paragraph (25) of the Third Amended Petition, respondent denies that it had knowledge of petitioner's commercial sale of the aforesaid wrenches as of September 1941, and denies that respondent had knowledge of the structure of the aforesaid wrenches as of September 1941; and to the contrary avers that, although respondent, through its attorneys, pursuant to an understanding between petitioner and respondent and their respective attorneys, endeavored to obtain from petitioner, through its attorney, knowledge of the construction and operation of torque measuring wrenches that petitioner was commercially advertising and selling during the

64 latter half of the year 1941, petitioner and its attorney intentionally and wilfully refused to give such information to respondent or its attorneys; and denies that respondent is by reason of such alleged priority precluded and estopped from asserting any claim whatsoever against the petitioner under claims 31 and 32 of Letters Patent No. 2,279,792 and claim 38 of Letters Patent No. 2,283,888. Respondent further specifically denies that Letters Patent Nos. 2,279,792 and 2,283,888 are in truth and in fact for an invention entirely different from that theretofore disclosed and claimed in the applications eventuating into the aforesaid Letters Patent. Respondent further specifically

denies that petitioner has the right to question or contest in any manner the validity of said Letters Patent Nos. 2,279,792 and 2,283,888, or either of them.

Respondent further denies that petitioner has the right to question respondent's rights in and with respect to Letters Patent Nos. 2,279,792 and 2,283,888 on the ground that respondent is precluded and estopped from asserting any claim whatsoever against the petitioner under claims 31 and 32 of patent No. 2,279,792 and claim 38 of patent No. 2,283,888, and further denies that the allegations contained in said paragraph (25) constitute grounds for so precluding and estopping respondent as aforesaid.

24. Answering paragraph (26) of the Third Amended Petition, respondent admits that claims 31 and 32 of Letters Patent No. 2,279,792 and claim 38 of Letters Patent No. 2,283,888 were inserted by amendment under Rule 78; but specifically denies each and every other allegation 64 contained in paragraph (26) of said Third Amended Petition, and further specifically denies that petitioner has the right to question or contest in any manner the validity of said Letters Patent Nos. 2,279,792 and 2,283,888, or either of them.

Respondent further denies that petitioner has the right to raise the questions of estoppel and intervening rights because it is estopped to do so, and respondent further denies that the allegations contained in said paragraph (26) constitute estoppel and intervening rights in favor of petitioner.

25. Answering paragraph (27) of the Third Amended Petition, respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations that the application which eventuated into Letters Patent No. 2,279,792 was on to-wit September 28, 1938, pledged to petitioner as security for the performance of a certain understanding between it and the applicant named in aforesaid Letters Patent No. 2,279,792; that said application for Letters Patent was pledged to petitioner in accordance with the terms of a preliminary written agreement dated September 28, 1938 (Third Amended Petition Exhibit 5); that the aforesaid preliminary agreement never was reduced to a formal agreement as originally contemplated under the terms thereof, and, therefore, denies the same and leaves petitioner to its proof thereof.

Further answering paragraph (27) of the Third Amended Petition, respondent denies that the agreement

dated December 20, 1940 (Third Amended Petition Exhibit 4) between petitioner and respondent was predicated upon petitioner's alleged limited title to the aforesaid application Serial No. 232,723, involved in said agreement of September 28, 1938 (Third Amended Petition Exhibit 5) between petitioner and said Kenneth R. Larson, and denies that there is any recitation to that effect in the second paragraph on page 2 of said contract of December 20, 1940 (Third Amended Petition Exhibit 4).

Further answering paragraph (27) of the Third Amended Petition, respondent admits that under said agreement of December 20, 1940 (Third Amended Petition Exhibit 4), petitioner agreed to and did reassign to said Kenneth R. Larson and Precision Instrument Manufacturing Company its entire right, title and interest in and to said Larson application Serial No. 232,723 (eventuating into said Larson patent No. 2,279,792), as more particularly set forth in the paragraph numbered 1 on page 2 of said agreement.

Further answering paragraph (27) of the Third Amended Petition, respondent denies each and every of the allegations contained in said paragraph which is not hereinbefore specifically denied or admitted; specifically denies that petitioner ever was a mere pledgee of said application Serial No. 232,723, and further specifically denies that by virtue of said agreement of September 28, 1938 (Third Amended Petition Exhibit 5) and/or said agreement of December 20, 1940 (Third Amended Petition Exhibit 4), petitioner has the right or is entitled to question or contest in any manner the validity of said Larson patent No. 2,279,792.

67 26. Respondent denies each and every allegation contained in paragraph (28) of the Third Amended Petition.

27. Respondent denies each and every allegation of paragraph (29) of the Third Amended Petition and specifically denies that petitioner has the right to question or contest in any manner the validity of said patents Nos. 2,279,792 and 2,283,888, or either of them, or any of the claims thereof.

28. Answering paragraph (30) of the Third Amended Petition, respondent admits that the application which became the Larson patent No. 2,279,792 in suit was declared by the United States Patent Office to be in interference with the applications which became the Zimmerman Patents

No. 2,283,888 and 2,269,503 (and its reissue No. 2,221,919) in suit; that said interference was identified in the United States Patent Office as No. 77,565 and was a proceeding in which the question to be determined was whether or not the party Larson had invented the subject matter of certain counts of said interference prior to the party Zimmerman; that pursuant thereto, in October and November, 1940, testimony of Larson and several witnesses on behalf of Larson was taken under oath at Chicago, Illinois, before Esther Meltzer, a Notary Public commissioned in the State of Illinois; that the contracts (Pet. Exhs. 4 and 6) are separate documents prepared and presented at the same time by respondent's attorneys and executed severally by the petitioner, intervenor and Kenneth R. Larson, at the request of respondent; and that said Interference No. 77,565 involved only a part of the subject matter of said Larson application.

Further answering paragraph (30) of the Third Amended Petition, respondent is without knowledge or information sufficient to form a belief as to the truth

of the allegations that Kenneth R. Larson, one of the witnesses testifying on behalf of Larson in said Interference No. 77,565, did then and there falsely testify on his own behalf under oath that he had invented and made a wrench embodying the subject matter of the counts in interference in the year 1934, and that he had produced several models which he identified, and a drawing which he testified as having been made prior to the summer of 1936, whereas in fact the wrenches, models, and drawings referred to had not been made until the years 1937 and 1938, that the issues to which said testimony was so directed were critical issues in the interference and that the testimony was material to said issues, that said testimony constituted perjury under the statutes of the United States (Title 18—U. S. Code, Section 231) and of the State of Illinois (Chapter 38, Ill. Rev. Stat., Section 473), and respondent, therefore, leaves petitioner to its proof thereof.

Further answering paragraph (30) of the Third Amended Petition, respondent denies the allegations that

(a) "respondent and its agents were aware that said testimony and evidence were false, and charged said Larson with the crime of perjury and threatened to institute prosecution against said Larson unless Larson and the Precision Instrument Manufacturing Co. transferred to respondent the Larson patent application and the sum

of Five Hundred (\$500.00) Dollars and executed the agreement identified herein as Exhibit 6 and in consideration thereof respondent promised to withhold its information and complaint and, further, would suppress the evidence of said perjury”;

69 (b) “in order to procure Larson’s release under the Exhibit 5 agreement from petitioner, respondent also threatened petitioner and its attorney who was then acting as attorney for Larson in the aforesaid interference with the crime of possessing and concealing knowledge of the commission of said perjury by Larson and others in his behalf (Title 18 U. S. Code, Section 250, 251) and with action for alleged civil and criminal conspiracy to defraud and damage respondent by unwarrantedly delaying the issuance of its patents with perjured testimony and evidence fostered or intended to be fostered upon the Patent Office”;

(c) “notwithstanding the fact that petitioner and its attorney had no knowledge that the said testimony and evidence by and on behalf of Larson was not the whole truth until so informed by respondent’s attorneys, the latter nevertheless continued its threats of prosecution against petitioner, its attorney, Larson and others; that said threats were repeated to a point that petitioner was coerced to co-operate with Larson and Precision Instrument Mfg. Co. and to subscribe to the respondent’s terms that were simultaneously tendered in the form of the Exhibits 4 and 6 contracts”;

(d) “said contracts were subscribed to by petitioner and Larson, together with the Precision Instrument Manufacturing Co. in consideration of respondent’s promise to suppress all causes of action against petitioner and the 694 crime of perjury against Larson; that petitioner, Larson and the Precision Instrument Mfg. Co. being under duress, coercion, and persistent threats of respondent and its attorneys, reluctantly and without any freedom of action complied with the terms and conditions under which said crime of perjury would be suppressed; whereupon in violation of the law (Title 18 U. S. Code, Section 250, 251; Chapter 38 Hl. Rev. Stat., Section 135), respondent did procure the transfer to it of the Larson application and the sum of Five Hundred (\$500.00) Dollars and the other covenants contained in Exhibits 4 and 6”;

(e) “through duress, coercion and the force of threats respondent did procure the execution by petitioner, Preci-

sion Instrument Mfg. Co., and Larson of the agreements Exhibits 4 and 6, and did thus compel the cancellation between petitioner and Larson of the agreement Exhibit 5 contrary and in violation of the terms thereof";

(f) "respondent did thereafter suppress the evidence of said perjury and withheld making its information and complaint to the proper officers and did thereby compound a crime in violation of the statutes hereinabove referred to";

(g) "the contracts comprising petitioner's Exhibit 4 and intervenor's Exhibit 6 were one and the same transaction" and that said contracts were executed "at the special insistence and request of respondent"; and

70 (h) "said agreements, Exhibits 4 and 6, and the transactions of which they are a part, are jointly and severally unlawful, null and void."

Further answering paragraph (30) of the Third Amended Petition, respondent is without knowledge or information sufficient to form a belief as to the truth of the allegation that the said Larson application and certain rights thereunder were at the time alleged by petitioner in said paragraph (30) held by petitioner under an agreement attached to said petition and identified as Exhibit 5, and, therefore, leaves petitioner to its proof thereof.

Further answering paragraph (30) of the Third Amended Petition, respondent denies each and every other allegation of said paragraph which is not hereinabove expressly admitted or denied.

29. Answering paragraph (31) of the Third Amended Petition, respondent is without knowledge or information sufficient to form a belief as to the truth of the allegation that when respondent filed its application for Reissue Letters Patent No. 22,219, petitioner had long been selling wrenches of the type accused in this suit, and, therefore, leaves petitioner to its proof thereof.

Further answering paragraph (31) of the Third Amended Petition, respondent denies each and every other allegation of said paragraph (31) and specifically denies that petitioner acquired intervening rights with respect to said Letters Patent, denies that petitioner has the right to raise the question of intervening rights, and denies that the allegations contained in said paragraph (31) establish intervening rights.

71 30. Answering paragraph (32) of the Third

Amended Petition, respondent denies each and every allegation contained in said paragraph and specifically denies that petitioner has the right to question or contest in any manner the validity of said Letters Patent No. Re. 22,219 (and the original thereof No. 2,269,503).

31. Answering paragraph (33) of the Third Amended Petition, respondent admits that on December 20, 1940, the time respondent and petitioner entered into the contract (Pet. Ex. 4), none of the three patents Nos. 2,279,792, 2,283,888 and Re. 22,219 [or the original thereof No. 2,269,503] had issued, but respondent denies each and every other allegation contained in said paragraph (33).

32. Answering paragraph (34) of the Third Amended Petition, respondent admits that by the agreement (Pet. Ex. 4) it licensed petitioner to sell six thousand (6,000) wrenches of the type then being made and sold by petitioner in interstate commerce, which wrench was then not covered by any issued patent, but which wrench embodied the inventions disclosed and claimed in the applications involved in said Interference No. 77,565 and which became the Larson and Zimmerman torque wrench patents in suit, said wrench being covered by numerous claims then allowed in said Larson and Zimmerman applications; that by said contract (Pet. Ex. 4) petitioner covenanted, after the selling of said six thousand (6,000) wrenches, to not thereafter sell wrenches of said type, and petitioner having violated said agreement not to sell wrenches of said type, respondent has notified petitioner of infringement of the Letters Patent in suit which were issued upon said Larson and Zimmerman applications aforesaid.

72 Further answering paragraph (34) of the Third Amended Petition, respondent specifically denies that said contracts (Pet. Exhs. 4 and 6) are in restraint of trade under the Sherman Antitrust Act, that they are illegal and that they are null and void; further specifically denies that petitioner has the right to question the legality of said contracts under the Sherman Antitrust Act; and further specifically denies that the allegations contained in said paragraph (34) establish illegality of said contracts in violation of the Sherman Antitrust Act.

Further answering paragraph (34) of the Third Amended Petition, respondent denies each and every allegation contained therein not hereinabove expressly admitted or denied and specifically denies that petitioner

has the right to question or contest in any manner, including the grounds alleged in subparagraphs (a) to (e), inclusive, of said paragraph (3), the validity of said Letters Patent Nos. 2,279,792, 2,283,888 and Re. 22,219 (and the original thereof No. 2,269,503).

33. Further pleading to paragraphs (17), (25), (26), (31) and (34) of the Third Amended Petition, respondent under and in accordance with Rule 12 of the Rules of Civil Procedure moves that the Third Amended Petition be dismissed with respect to said paragraphs in advance of the trial of this cause on the ground that said paragraphs fail to state a claim or claims upon which relief can be granted, and respondent further moves that, upon the granting of the above motion to dismiss, the related portions of petitioner's prayer for relief be stricken.

73 34. Respondent, in further answering the Third Amended Petition filed herein, says that in said agreement of December 20, 1940 (Pet. Exh. 4) between petitioner and respondent, petitioner warranted itself to be the owner of the entire right, title and interest in and to said Larson Application Serial No. 232,723, and agreed, among other things, in paragraph numbered 2 thereof, that it would not after a specified time "directly or indirectly, infringe any of the claims (now or hereafter allowed) in said Larson application, Serial No. 232,723 and said Zimmerman applications, or either of them, or any patent that may issue thereon"; that said agreement further provides, in paragraph numbered 3 thereof, that petitioner "agrees not to directly or indirectly contest the validity of any claim or claims of any Letters Patent that may issue upon said Zimmerman and Larson applications"; that said Zimmerman applications and the Larson application referred to in said paragraphs of said agreement were the Zimmerman applications Serial Nos. 175,863 and 210,869 maturing into Letters Patent Nos. 2,283,888 and Re. 22,219 (and the original thereof No. 2,269,503), respectively, in suit, and the Larson application, Serial No. 232,723, maturing into Letters Patent No. 2,279,792 in suit.

Respondent further says that petitioner, as assignor of the Larson application Serial No. 232,723 which matured into Letters Patent No. 2,279,792 and as a party in interest in Patent Office Interference No. 77,565 as well as by the express provisions of said agreement of De-

ember 20, 1940 (Pet. Exh. 4), is without right and is estopped from questioning or contesting in any manner the validity of said Letters Patent No. Re. 22,219 (and the original thereof No. 2,269,503), 2,279,792 and 74 2,283,888, or any of them, and that petitioner's attack on the validity of said Letters Patent is in direct violation of the terms and conditions of said agreement of December 20, 1940 (Pet. Exh. 4):

Wherefore, the following portions of the Third Amended Petition filed herein fail to state a claim upon which relief can be granted, and under and in accordance with Rule 12 of the Rules of Civil Procedure the Third Amended Petition should be dismissed in and with respect to the same in advance of the trial of this cause:

That part of paragraph (6) which reads as follows: "and whether said patents are good and valid at law,";

That part of paragraph (7) which reads as follows: "are wholly invalid or";

All of paragraphs (10), (11), (12), (13), (14), (15), (16), (18), (19), (20), (21), (22), (23), (24), (25), (26), (27), (29), (31), (32) and (34):

Those parts of paragraph (17) which read as follows: line 14, "ambiguous",

lines 15 and 16, "in violation of the Patent Act (Title 35, U. S. Code, Sec. 33; R. S. 4888)",

line 21, "unlawfully",

lines 23 and 24, "be sufficiently vague in terms to", and

line 29, beginning with the words "whereas" to the end of paragraph (17):

Those parts of the prayer for relief which relate to the foregoing paragraphs of the Third Amended Petition; and

75 All other portions or allegations of the Third Amended Petition which directly or indirectly relate to invalidity of the torque wrench patents in suit.

35. Respondent denies that petitioner is entitled to the relief prayed for in its Third Amended Petition or any other relief against respondent.

Automotive Maintenance Machinery Co.

(Respondent.)

By Davis, Lindsey, Smith & Shonts

Its Attorneys.

Of Counsel:

Raymond E. Fidler.

52 *Amended and Supplemental Counterclaim—No. 4451.*

Service of the foregoing Answer to Third Amended Petition for Declaratory Decree and receipt of a copy thereof is hereby acknowledged this 10th day of March, 1943.

Harry C. Alberts
Attorney for Petitioner.
Dawson, Ooms & Booth
Attorney for Intervenor.

76 And afterwards on, to wit, the 23rd day of November, 1942 came the Respondent in Civil Action No. 4451 by its attorneys and filed in the Clerk's office of said Court its certain Amended and Supplemental First Counterclaim in words and figures following, to wit:

77 IN THE UNITED STATES DISTRICT COURT.

(Caption—4451)

**RESPONDENT'S AMENDED AND SUPPLEMENTAL
FIRST COUNTERCLAIM.**

Now comes, Automotive Maintenance Machinery Co., the respondent in the above-entitled cause, and by leave of Court first had and obtained, files this its Amended and Supplemental First Counterclaim in this cause, and says:

1. Respondent, Automotive Maintenance Machinery Co., is a corporation organized under and existing by virtue of the laws of the State of Illinois, and has its principal place of business at North Chicago, Illinois.

2. Petitioner, Snap-On Tools Corporation, as respondent is informed and believes and therefore avers, is a corporation organized under and existing by virtue of the laws of the State of Delaware, and has its principal place of business at Kenosha, Wisconsin.

3. This is a counterclaim arising under the laws of the United States for infringement of United States Letters Patent and for an accounting of profits and damages and for an injunction. Jurisdiction of this Court is further based upon the Second Amended Petition for Declaratory Decree filed herein by petitioner under the patent laws of the United States.

4. On January 13, 1942, United States Letters Patent No. 2,269,503 were duly and legally issued to respondent, Automotive Maintenance Machinery Co., on an application filed by Herman W. Zimmerman for an invention in Torque Measuring Wrench, and on November 3, 1942, reissue of said patent was duly and legally issued to respondent as Letters Patent No. Re. 22,219; and since the respective issue dates of said Letters Patent respondent has been the sole and exclusive owner thereof, and still is the sole and exclusive owner of said reissue patent.

5. On April 14, 1942, United States Letters Patent No. 2,279,792 were duly and legally issued to respondent, Automotive Maintenance Machinery Co., on an application filed by Kenneth R. Larson for an invention in Torque Wrench; and since that date respondent has been and still is the sole and exclusive owner of said Letters Patent.

6. On May 19, 1942, United States Letters Patent No. 2,283,888 were duly and legally issued to respondent, Automotive Maintenance Machinery Co., on an application filed by Herman W. Zimmerman for an invention in Torque Measuring Wrench; and since that date respondent has been and still is the sole and exclusive owner of said Letters Patent.

7. As of December 20, 1940, respondent, Automotive Maintenance Machinery Co., and petitioner, Snap-On Tools Corporation, entered into a certain agreement in and with respect to the inventions described and claimed in said Letters Patent Nos. Re. 22,219 (and the original thereof No. 2,269,503), 2,279,792 and 2,283,888, and each of them, wherein said petitioner, who was then the owner of the entire right, title and interest in and to the application eventuating into said Larson patent No. 2,279,792, *inter alia* assigned to said Kenneth R. Larson and Precision Instrument Manufacturing Company of Des Plaines, Illinois, its entire right, title and interest in and to said Larson application, and agreed that, upon the completion of certain orders for wrenches on hand as of the date of said agreement, to discontinue the manufacture and/or sale and/or use of torque wrenches embodying the inventions of each of said Letters Patent Nos. Re. 22,219 (and original thereof No. 2,269,503), 2,279,792 and 2,283,888, and further agreed that they would not thereafter, directly or indirectly, infringe said Letters Patent when they should

issue, and further agreed not to, directly or indirectly, contest the validity of any claim or claims of said Letters Patent, or any of them, all as shown by a copy of said agreement of December 20, 1940, attached to the Second Amended Petition filed herein as Exhibit 4.

8. The said inventions described and claimed in said Letters Patent Nos. Re. 22,219 (and the original thereof No. 2,269,503), 2,279,792 and 2,283,888, and each of them, are of great utility and value; said inventions have been and are of great benefit and advantage to respondent and the public; and the trade and public, including said petitioner, have acknowledged and acquiesced in the validity of said Letters Patent, and each of them, and in the aforesaid rights of respondent.

9. Petitioner has been given written notice by respondent, Automotive Maintenance Machinery Co., of said Letters Patent Nos. Re. 22,219 (and the original thereof No. 2,269,503), 2,279,792 and 2,283,888 and of its infringement thereof; petitioner had knowledge of the applications maturing into said patents Nos. 2,269,503, 2,279,792 and 2,283,888 long prior to the issuance thereof; and respondent has placed the required statutory notice of said Letters Patent Nos. 2,269,503 and 2,283,888 on torque wrenches made and sold by it under said Letters Patent, which torque wrenches have been made and sold in large quantities by respondent.

10. The petitioner has, within the last six years, and prior to the filing of its Second Amended Petition herein, and subsequent to the issuance of said Letters Patent Nos. Re. 22,219 (and the original thereof No. 2,269,503), 2,279,792 and 2,283,888, and each of them, infringed said Letters Patent, and each of them, in defiance of respondent's rights acknowledged and acquiesced in by the petitioner and further in violation of the terms and conditions of said agreement entered into as of December 20, 1940, and petitioner continues to infringe said Letters Patent, and each of them, by wilfully, maliciously and without the consent or license of respondent, making or causing to be made, selling or causing to be sold and using or causing to be used, within the Northern District of Illinois, Eastern Division thereof, and elsewhere within the United States, torque wrenches made in accordance with and embodying the inventions of said Letters Patent and in violation of

Answer to First and Second Counterclaim—No. 4451-55

the terms and conditions of said agreement entered into as of December 20, 1940.

Automotive Maintenance Machinery Co.,
(Respondent).

By Davis, Lindsey, Smith & Shonts,
Its Attorneys,
332 South Michigan Avenue
Chicago, Illinois.

Of Counsel:

Raymond E. Fidler,
Harry W. Lindsey, Jr.

81 And afterwards on, to wit, the 14th day of December, 1942 came the Petitioner in Civil Action No. 4451 by its attorneys and filed in the Clerk's office of said Court its certain Answer to Respondent's First and Second Counterclaims, a portion of which is in words and figures following, to wit:

82 IN THE UNITED STATES DISTRICT COURT.
(Caption—445)

**ANSWER OF PETITIONER TO RESPONDENT'S
FIRST AND SECOND COUNTERCLAIMS.**

Now Comes Petitioner, Snap-On Tools Corporation, a Delaware Corporation; and files its Answer to Respondent's First and Second Counterclaims filed herein on September 23, 1942 and amended November 23, 1942, alleging:

1. Admits the allegations of Paragraph 1.
2. Admits the allegations of Paragraph 2.
3. Admits the allegations of Paragraph 3.
4. Petitioner admits that Letters Patent No. 2,269,503 were issued to Respondent on January 13, 1942, but denies that they were duly and legally issued; petitioner denies that Reissue Letters Patent 22,219 were legally issued and denies that there existed any statutory ground for the reissue of Letters Patent No. 2,269,503. Petitioner is not informed as to the ownership of said original Letters Patent and its reissue and therefore denies Respondent's allegations with respect thereto.

83 5. Petitioner admits that Letters Patent No. 2,279,792 were issued to Respondent on April 14, 1942, but denies that they were duly and legally issued. Petitioner

is not informed as to the ownership of said Letters Patent and therefore denies respondent's allegations with respect thereto. Petitioner further denies that claims 31 and 32 of said Letters Patent were legally allowed and alleges that said claims are not supported by the specifications and do not comply with R.S. 4888 (U. S. Code, Title 35, Sec. 33).

6. Petitioner admits that Letters Patent No. 2,283,888 were issued to respondent on May 19, 1942, but denies that they were duly and legally issued. Petitioner is not informed as to the ownership of said Letters Patent and therefore denies respondent's allegations with respect thereto. Petitioner further denies that claim 38 of said Letters Patent was legally allowed and alleges that said claim is not supported by the specification and does not comply with R.S. 4888 (U. S. Code, Title 35, Sec. 33).

7. Petitioner admits that it did, on December 20, 1940, sign the document attached to its Second Amended Petition as Exhibit 4, but petitioner alleges that at the time of the signing thereof not one of the three patents sued on herein had issued and that the alleged subject matter of said alleged contract was not in existence or certain, wherefore there was no contract of the scope and effect asserted by respondent. Petitioner further alleges that said agreement did not contemplate or embrace Reissue Letters Patent No. 22,219.

Petitioner further alleges that said agreement includes provisions restraining the sale of wrenches moving in interstate commerce in violation of the Sherman Act and said agreement is therefore void.

84 Petitioner repeats here by reference paragraphs 27, 28 and 30 of its Second Amended Petition and alleges said agreement is therefore void.

8. Petitioner denies the allegations of Paragraph 8 and alleges that respondent has been unable to make commercially satisfactory and accurate wrenches following the teachings of the three patents sued on in respondent's First Counterclaim, and that the wrenches made under said patents are inferior to those sold by petitioner and manufactured by the Intervenor, Precision Instrument Manufacturing Company, and petitioner denies that there has been any acquiescence in the asserted validity of said Letters Patents or any of them.

9. Petitioner denies that respondent has ever given petitioner notice of any alleged infringement of any of said Letters Patent except No. 2,279,792 and No. 2,283,888.

of which respondent wrote petitioner on April 18, 1942 and July 7, 1942, respectively, except by institution of suit against petitioner's supplier, intervenor herein, on June 15, 1942, in which only Letters Patent Nos. 2,279,792 and 2,283,888 were sued on, and no charge of infringement of Letters Patent No. 2,269,503 was made until the Amended Complaint was filed against intervenor on July 22, 1942. Petitioner denies that it has ever been given notice of alleged infringement of Reissue Letters Patent No. 22,219. Petitioner is without knowledge of whether or not respondent has made and sold wrenches in large quantities or marked any wrenches under said Letters Patents 2,269,503 and 2,283,888 and petitioner therefore denies the allegation.

10. Petitioner denies the allegations of Paragraph 10, and as an affirmative defense repeats here by reference paragraphs 8 and 9 of its Second Amended Petition for a Declaratory Decree, and extends same to Reissue No. 22,219.

85 11. Petitioner alleges that the intervenor, Precision Instrument Manufacturing Company, has, through its employes, perfected a resistance measuring wrench which said company has subsequently manufactured and for whom petitioner has exclusively sold said measuring wrenches in large quantities; and said wrench embodies a new principle of design and operation never theretofore incorporated into a similar instrument; that respondent has for many years without success sought to produce a satisfactory resistance measuring wrench and has produced a large number of different designs of resistance measuring wrenches upon which respondent has procured a large number of patents in an effort to prevent others from manufacturing a satisfactory resistance measuring wrench; that when in September, 1941 petitioner publicly offered intervenor's new wrench, respondent's attorneys procured a specimen thereof and with this specimen before respondent's attorneys, said attorneys drew patent claims designedly and deliberately phrased in ambiguous terms to purport to embrace the intervenor's newly perfected wrench, in violation of the Patent Act (Title 35, U. S. Code, Sec. 33, R. S. 4888), which claims petitioner's attorneys inserted under Rule 78 of the United States Patent Office into the then pending and allowed applications which finally matured into United States Letters Patents No. 2,279,792 and 2,283,888 and subsequently respondent unlawfully procured Reissue Patent No. 22,219, all for the sole purpose of procuring claims in said Letters Patent that might be suffi-

ciently vague in terms as to appear to cover the resistance measuring wrenches being sold by the petitioner and to give color to this counterclaim for alleged infringement, whereas respondent and its attorneys well knew that said wrenches were not the invention of the applicant for each of said Letters Patent, but involved an entirely different principle of construction and operation.

12. Petitioner repeats here by reference paragraphs 10, 11, 12, 26, and 29 of its Second Amended Petition for a Declaratory Decree.

13. Petitioner alleges that plaintiff has, by the devices alleged in Paragraphs 11 and 12 hereof, attempted to monopolize the manufacture and sale of resistance measuring wrenches, which move in interstate commerce, and has sought to procure patents covering devices which were not the inventions of the applications for each of said letters patent into whose applications respondent has inserted claims intending to cover the invention of others.

14. Petitioner further alleges that when respondent filed its application for Reissue Letters Patent No. 22,219, intervenor, Precision Instrument Manufacturing Company had long been selling wrenches of the type accused in this suit, as respondent well knew, which did not infringe any claim of the Letters Patent 2,269,763, which was subsequently reissued as Reissue No. 22,219, whereby Precision Instrument Manufacturing Company assigned intervening rights with respect to said Reissue Letters Patent and cannot be held to infringe the claims thereof.

15. Petitioner repeats here by reference paragraph 25 of the Second Amended Petition for a Declaratory Decree.

16. Petitioner alleges that respondent because of the matters alleged in paragraphs 11, 12 and 13 hereof, as well as other inequitable conduct, comes into this Court with unclean hands and may not maintain its counterclaims.

17. Petitioner alleges that the claims herein asserted against the resistance measuring wrenches sold by the petitioner herein, do not read upon said wrenches and are not infringed thereby because of the restricted meaning which must be given said claims in the light of the respective specifications of each of the Letters Patent and upon the amendments made to such claims and the cancellations made of other claims during the prosecution of the respective applications for said Letters Patent, and the existing art of resistance measuring wrenches existing at the time of the alleged inventions of said Let.

fers Patent and in part represented by the wrenches described in the following Letters Patent:

United States Patents.

Number	Date	Patentee
78,604	June 2, 1868	O'Neil
164,100	June 8, 1875	Plymale
414,615	Nov. 5, 1889	Walker
641,135	Jan. 9, 1900	Culmer, et al
832,064	Oct. 2, 1906	Keeler
1,048,488	Dec. 31, 1912	Blanchard, et al
1,294,171	Feb. 11, 1919	Rockwell
1,512,192	Oct. 21, 1924	Benko
1,585,916	Oct. 2, 1928	Hans, et al
1,728,552	Sept. 17, 1929	Kennedy, et al
1,809,087	June 9, 1931	Watrous
1,825,539	Sept. 29, 1931	Patton
1,830,997	Nov. 10, 1931	Gimprich
1,848,488	May 8, 1932	Linendoller
1,900,581	Mar. 7, 1933	Oliwer
1,925,219	Sept. 5, 1933	Weigt
2,007,880	July 9, 1935	Sharp
2,063,622	Dec. 8, 1936	Pfeiffer
2,074,079	Mar. 16, 1937	Bahr, et al
2,144,731	Jan. 24, 1939	Zimmerman
2,159,354	May 23, 1939	Dunn
2,159,373	May 23, 1939	Dunn
2,167,520	Aug. 1, 1939	Kress
2,171,872	Sept. 5, 1939	Zimmerman
2,183,633	Dec. 19, 1939	Zimmerman
2,196,966	Feb. 20, 1940	Zimmerman
2,206,315	July 2, 1940	Zimmerman
2,211,401	Apr. 13, 1940	Zimmerman
2,116,955	May 3, 1938	Johnson
2,260,358	Oct. 28, 1941	Zimmerman
2,231,240	Feb. 11, 1941	Zimmerman
2,260,258	Oct. 28, 1941	Zimmerman
2,278,792	Apr. 14, 1942	Larson
2,283,707	May 19, 1942	Starckant
2,283,888	May 19, 1942	Zimmerman

Foreign Patents

French—621,277	1927	Andre-Pierre
British—399,901	1933	Battio, et al
British—423,477	1935	Salle

18. Petitioner repeats here by reference paragraph 88 13 of its Second Amended Petition, but in line 6 thereof changes the words "prior to the" to—after the prior—

19. Petitioner repeats here by reference paragraphs 14, 15 and 16 of its Second Amended Petition.

20. Petitioner repeats here by reference paragraphs 21 to 24 inclusive of its Second Amended Petition for a Declaratory Decree.

21. Petitioner repeats here by reference paragraph 18 of its Second Amended Petition, extends same to Reissue No. 22,219 and further relies on any and all prior art patents cited in paragraph 17 of this answer.

22. Petitioner repeats here by reference paragraph 19 of its Second Amended Petition and further relies on any and all prior art patents cited in paragraph 17 of this answer.

23. Petitioner repeats here by reference paragraph 20 of its Second Amended Petition and further relies on any and all prior art patents cited in paragraph 17 of this answer.

24. Petitioner alleges that its resistance measuring wrench business is wholly devoted to the supplying of wrenches to the armed forces of the United States, and the defense industry of the United States, and that said wrenches are practically indispensable to the maintenance of aircraft, marine engines and mechanized war equipment, and that the restraints which respondent is attempting to impose upon petitioner, and the interference with its resistance wrench business which respondent is causing by the maintenance of these counterclaims will seriously impair the defense of the United States and so outweighs any asserted injury that might befall respondent if these counterclaims were not maintained that this Court of Equity should deny respondent all relief.

25. Petitioner further alleges that substantially all the resistance measuring wrenches sold by Snap-on Tools Corporation are for the United States and its contracting agents, and that respondent's only remedy for any alleged infringements of the Letters Patent sued upon herein by petitioner's sale of such wrenches for the United States and its agents is by a suit against the United States in the Court of Claims.

**ANSWER OF PETITIONER TO RESPONDENT'S
SECOND COUNTERCLAIM.**

90 12. Petitioner denies each and every allegation of both counterclaims not herein expressly admitted and further denies that the respondent is entitled to the relief or any part of the relief demanded, and prays that the counterclaims be dismissed at respondent's costs.

Snap-on Tools Corporation,

By: Harry C. Alberts,

Harry C. Alberts,

Petitioner's Attorney,

38 S. Dearborn St.

Chicago, Illinois.

December 14, 1942.

91 And afterwards on, to wit, the 1st day of March, 1943 came the Intervenor in Civil Action No. 4451 by its attorneys and filed in the Clerk's office of said Court its certain Amended Answer to Respondent's Amended and Supplemental First Counterclaim, in words and figures following, to wit:

92 IN THE UNITED STATES DISTRICT COURT.
(Caption—4451)

**AMENDED ANSWER OF INTERVENOR TO
RESPONDENT'S AMENDED AND SUPPLEMENTAL
FIRST COUNTERCLAIM.**

Now Comes Intervenor, Precision Instrument Manufacturing Company, a corporation of Illinois, by leave of Court, and files this Amended Answer to Respondent's Amended and Supplemental First Counterclaim filed herein on November 23, 1942, alleging:

1. Intervenor admits the allegations of Paragraph 1.
2. Intervenor admits the allegations of Paragraph 2.
3. Intervenor admits the allegations of Paragraph 3.
4. Intervenor admits that Letters Patent No. 2,269,503 were issued to Respondent on January 13, 1942, but denies that they were duly and legally issued. Intervenor is not informed as to the ownership of said Letters Patent

and therefore denies Respondent's allegations with respect thereto. Intervenor denies that Reissue Letters Patent No. 2,219 were legally granted and denies that there existed any statutory ground for the reissue of Letters Patent No. 2,269,503.

5. Intervenor admits that Letters Patent No. 2,279,792 were issued to Respondent on April 14, 1942, but denies that they were duly and legally issued. Intervenor is not informed as to the ownership of said Letters Patent and therefore denies Respondent's allegations with respect thereto. Intervenor denies that claims 31 and 32 were legally allowed, and alleges that said claims are not supported by the specification and do not comply with R.S. 4888 (U. S. Code, Title 35, sec. 33).

6. Intervenor admits that Letters Patent No. 2,283,888 were issued to Respondent on May 19, 1942, but denies that they were duly and legally issued. Intervenor is not informed as to the ownership of said Letters Patent, and therefore denies Respondent's allegations with respect thereto. Intervenor denies that claim 38 was legally allowed, and alleges that said claim is not supported by the specification, and does not comply with R.S. 4888 (U. S. Code, Title 35, sec. 33).

7. a. Intervenor admits that it did, on December 20, 1940, sign the document attached to the Amended Petition herein as Exhibit 6, but Intervenor alleges that at the time of the signing thereof not one of the three patents sued on herein had issued and that the alleged subject matter of said alleged contract was not in existence or certain, wherefore there was no contract of the scope and effect asserted by Respondent. Intervenor further alleges that said agreement did not contemplate or embrace Reissue Letters Patent No. 2,219.

b. Intervenor alleges that the application for Letters Patent No. 2,279,792 (herein called Larson application) was by the United States Patent Office declared to be in interference with the applications for Letters Patent Nos. 2,283,888 and 2,269,503 (herein called Zimmerman applications) in Interference No. 77,565, in which the question to be determined was whether the party Larson had invented the subject matter of certain counts of said interference prior to the party Zimmerman; in October, 1940, testimony of several witnesses was taken under oath on behalf of the party Larson at Chicago, Illinois, before Esther Meltzer, a Notary Public commissioned in the State

of Illinois; Kenneth R. Larson; one of the witnesses, did then and there knowingly falsely testify on his own behalf under oath, that he had invented and made a wrench embodying the subject matter of the counts then in interference in the year 1934, and that he had produced several models, which he identified, and a drawing which he identified as having been made prior to the summer of 1936, whereas in fact the wrenches, models, and drawings referred to had not been made until the years 1937 and 1938; the issues to which said testimony so directed were critical issues in the interference and the testimony was material to said issues, said testimony constituted perjury under the statutes of the United States (Title 18, U. S. Code, sec. 231), and of the State of Illinois (Chap. 38, Ill. Rev. Stat., sec. 473); respondent and its agents were aware that said testimony was false, and charged said Larson with the crime of perjury and threatened to institute prosecution against said Larson unless Larson and Intervenor transferred to Respondent the Larson application and the sum of \$500, and executed the agreement, Exhibit 6, and Respondent promised to withhold its complaint and suppress the evidence of said perjury if the Larson application and the sum of \$500 was transferred to Respondent and Intervenor and Larson executed the agreement, Exhibit 6, and if Petitioner would execute the agreement, Exhibit 4; whereupon in violation of law (Title 18, U. S. Code, sec. 250, 251; Chap. 38, Ill. Rev. Stat., sec. 135) Respondent did procure the transfer to it of the Larson application and the sum of \$500, and did procure the execution by Intervenor and Larson of the agreement, Exhibit 6, and by Petitioner the agreement, Exhibit 4, and Respondent did thereafter suppress the evidence of said perjury and withhold making its complaint to the proper officers, and did thereby compound a crime in violation of the statutes hereinabove referred to; wherefore said agreement, Exhibit 6, and said agreement, Exhibit 4, and the transaction of which they are a part, are unlawful, null, and void.

c. Intervenor further alleges that said agreements, Exhibits 6 and 4, include a provision prohibiting Intervenor from manufacturing and selling any torque wrenches, which are article moving in interstate commerce, responding to the claims of the Letters Patent here in suit, and prohibits Intervenor from contesting the validity of said patents, which prohibitions and covenants constitute re-

straints in violation of the Sherman Act (Title 15, U. S. Code, sec. 1) and are void unless sustained by valid patents; Intervenor alleges said patents are invalid and said agreements are therefore void.

97 8. Intervenor denies the allegations of Paragraph 8 and alleges that Respondent has been unable to make commercially satisfactory and accurate wrenches following the teachings of the three patents sued on herein, and that the wrenches made under said patents are inferior to those made and sold by Intervenor, Precision Instrument Manufacturing Company, and Intervenor denies that there has been any acquiescence in the asserted validity of said Letters Patent, or any of them.

9. Intervenor is without knowledge of whether Respondent has made, sold, or marked any wrenches under said Letters Patent, and Intervenor therefore denies the allegation, and Intervenor denies that Respondent has ever given Intervenor notice of any alleged infringement of any of said Letters Patent except No. 2,279,792, of which Respondent wrote Intervenor on April 18, 1942, except by institution of a suit known as Automotive Maintenance Machinery Co. v. Precision Instrument Manufacturing Company, Civil Docket No. 4382, on June 15, 1942, in which only Letters Patent Nos. 2,279,792 and 2,283,888 were sued on, and no charge of infringement of Letters Patent No. 2,269,503 was made until the Amended Complaint was filed in said suit Civil Docket No. 4382 on July 22, 1942. Whether Respondent gave Petitioner notice of alleged infringement of said Letters Patent is not known to Intervenor. Intervenor has not been given notice of alleged infringement of Reissue Letters Patent No. 22,219 except by the pleadings in this suit and Civil Action No. 4382.

98 10. Intervenor denies the allegations of Paragraph 10.

11. Intervenor alleges that it has, through its employees, perfected a resistance measuring wrench which Intervenor has subsequently manufactured and sold in large quantities, that said wrench embodies a new principle of design and operation never theretofore incorporated into a similar instrument, that Respondent has for many years without success sought to produce a satisfactory resistance measuring wrench and has produced a large number of different designs of resistance measuring

wrenches upon which Respondent has procured a large number of patents in an effort to prevent others from manufacturing a satisfactory resistance measuring wrench; that when in October, 1941, Intervenor publicly offered its wrench, Respondent's attorneys procured a specimen thereof and with this specimen before Respondent's attorneys, said attorneys drew patent claims designedly and deliberately phrased in ambiguous terms to purport to embrace Intervenor's wrench, in violation of the Patent Act (Title 35, U. S. Code, Sec. 33; R. S. 4888), which claims Respondent's attorneys inserted under Rule 78 of the United States Patent Office into the then pending and allowed applications which finally matured into United States Letters Patent Nos. 2,279,792 and 2,283,888, and subsequently Respondent unlawfully procured Reissue Letters Patent No. 22,219, all for the sole purpose of procuring claims in said Letters Patent that might be sufficiently vague in terms as to appear to cover the resistance measuring wrenches being made and sold by

Intervenor and to give color to Respondent's suit for alleged infringement, Civil Docket No. 4382, whereas Respondent and its attorneys well knew that said wrenches were not the invention of the applicants for said Letters Patent, but involved an entirely different principle of construction and operation.

12. Intervenor alleges that Respondent has, by the devices alleged in Paragraph 11 hereof, attempted to monopolize the manufacture and sale of resistance measuring wrenches, which move in interstate commerce, and has sought to procure patents covering devices which were not the inventions of the applicants for patents into whose applications Respondent has inserted claims pretending to cover the inventions of others.

13. Intervenor alleges that Respondent, because of the matters alleged in Paragraphs 7b, 7c, and 11 and 12 hereof, comes into this Court with unclean hands and may not maintain its Counterclaim.

14. Intervenor alleges that the claims herein asserted against the resistance measuring wrenches made and sold by the Intervenor herein, do not read upon said wrenches and are not infringed thereby because of the restricted meaning which must be given said claims in the light of the respective specifications of each of the Letters Patent sued upon, the amendments made to

such claims and the cancellation made of other claims during the prosecution of the respective applications for said Letters Patent, and the existing art of resistance measuring wrenches extant at the time of the alleged inventions of said Letters Patent, and in-part represented by the wrenches described in the following Letters Patent:

	Number	Date	Patentee
U. S.	78,604	June 2, 1868	O'Neil
	164,100	June 8, 1875	Plymale
	641,195	Jan. 9, 1900	Culmer et al.
	832,064	Oct. 2, 1906	Keeler
	1,294,171	Feb. 11, 1919	Rockwell
	1,512,192	Oct. 21, 1924	Benko
	1,664,776	Apr. 3, 1928	Heise
	1,728,552	Sept. 17, 1929	Kenredy et al.
	1,809,087	June 9, 1931	Watrous
	1,825,539	Sept. 29, 1931	Patton
	1,830,997	Nov. 10, 1931	Gumprieh
	1,900,581	Mar. 7, 1933	Oliver
	1,922,219	Sept. 5, 1933	Weight
	2,007,880	July 9, 1935	Sharp
	2,063,622	Dec. 8, 1936	Pfeiffer
	2,074,079	Mar. 16, 1937	Bahr et al.
	2,115,955	May 3, 1938	Johnson
	2,144,731	Jan. 24, 1939	Zimmerman
	2,159,354	May 23, 1939	Dunn
	2,159,373	May 23, 1939	Dunn
	2,167,720	Aug. 1, 1939	Kress
	2,171,872	Sept. 5, 1939	Zimmerman
	2,183,633	Dec. 19, 1939	Zimmerman
	2,190,966	Feb. 20, 1940	Zimmerman
	2,199,553	May 7, 1940	Zimmerman
	2,206,315	July 2, 1940	Zimmerman
	2,211,401	Aug. 13, 1940	Zimmerman
	2,231,240	Feb. 11, 1941	Zimmerman
	2,260,358	Oct. 28, 1941	Zimmerman
	2,279,792	Apr. 14, 1942	Larson
	2,283,707	May 19, 1942	Sturtevant
	2,283,888	May 19, 1942	Zimmerman
British	399,901	1933	Battio et al.
	423,477	1935	Salle
French	621,277	Sept. 11, 1926	Virgne

101 15. Intervenor alleges that the resistance measuring wrench business of Intervenor is wholly devoted to the supplying of wrenches to the armed forces of the United States, and the defense industry of the United States, and that said wrenches are practically indispensable to the maintenance of aircraft, marine engines and mechanized war equipment, and that the restraints which Respondent is attempting to impose upon Intervenor, and its exclusive sales outlet, Petitioner, and the interference with Intervenor's business which Respondent is causing by the maintenance of its Counterclaim against Petitioner and its suit against Intervenor, Civil Docket No. 4382, will seriously impair the defense of the United States, and so outweighs any asserted injury that might befall Respondent if its Counterclaim were not maintained that this Court of Equity should deny Respondent all relief under the First Counterclaim.

16. Intervenor further alleges that substantially, all the resistance measuring wrenches being made and sold by Petitioner and Intervenor are being manufactured by Intervenor for the United States and its contracting agents, and that Respondent's only remedy for any alleged infringements of the Letters Patent sued upon in the First Counterclaim is by a suit against the United States in the Court of Claims.

102 17. Intervenor further alleges that when Respondent filed its application for Reissue Letters Patent No. 22,219, Intervenor, Precision Instrument Manufacturing Company, had long been selling wrenches of the type accused in this suit, as Respondent well knew, which did not infringe any claim of the Letters Patent No. 2,269,503, which was subsequently reissued as Reissue No. 22,219, whereby Precision Instrument Manufacturing Company acquired intervening rights with respect to said Reissue Letters Patent, and cannot be held to infringe the claims thereof.

18. By the agreement, Exhibit 6, Respondent licensed Intervenor, Precision Instrument Manufacturing Company, to make and sell six thousand (6,000) wrenches of the type then being made and sold by said Intervenor in interstate commerce, which wrench was then not covered by any issued patent, and thereafter forbade Intervenor from selling such wrenches, which are articles moving in

interstate commerce; wherefore said agreement is in restraint of trade under the Sherman Anti-trust Act of the United States (Act of July 2, 1890, c. 647, 26 Stat. 209) and is illegal, as Respondent did not, at the time of the execution of said agreement, and does not now, have any valid United States Letters Patent which would support a restraint in interstate commerce. The Letters Patent upon which Respondent has brought this Counterclaim are invalid and void on the grounds that:

103 (a) The alleged inventions claimed therein do not constitute invention but merely changes common to those skilled in the art of wrench manufacture.

(b) The claims relied upon by Respondent herein are vague, indefinite, and ambiguous, and do not particularly point out and distinctly claim the part, improvement, or combination which the respective applicant for each patent claims as his invention or discovery, as required by R. S. 4888.

(c) The alleged inventions claimed in each of the patents in suit do not constitute invention over the disclosures of the patents set forth in paragraph 14 of Intervenor's Answer.

(d) The alleged inventions claimed in each of the patents in suit were not patentable because they were patented or described, prior to the alleged invention thereof or more than two years before the filing of the respective applications therefor, in the patents enumerated in paragraph 14 of Intervenor's Answer, and prior to the alleged invention thereof by patentees Zimmerman and Larson, were invented by the Patentees of the patents enumerated in paragraph 14 of the Answer, who reside at the respective residences named in their respective patents, and said alleged inventions were prior to the alleged invention thereof or more than two years before the filing of the respective applications therefor, invented by, known to, and publicly used and sold by Allen I. Dunn of Cedar Rapids, Iowa, Cedar Rapids Engineering Company of Cedar Rapids, Iowa, and Automotive Maintenance Machinery Company of North Chicago, Illinois.

(e) The alleged inventions claimed in claim 38 of Letters Patent No. 2,283,888 were not the inventions of Herman M. Zimmerman, who surreptitiously or unjustly obtained a patent therefor, but were in fact invented by

Kenneth R. Larson of Des Plaines, Illinois, who was using reasonable diligence in adapting and perfecting the same.

Casper W. Ooms

Attorney for Intervenor

February, 1943.

104 And afterwards on, to wit, the 6th day of August, 1943 there was filed in the Clerk's office of said Court a certain Stipulation in words and figures following, to wit:

105 IN THE UNITED STATES DISTRICT COURT
(Caption 4382)

STIPULATION:

It is hereby stipulated and agreed by and between counsel for the respective parties that in view of the voluminous character of the pleadings of the respective parties in these consolidated actions resulting from various amendments thereto from time to time, only the pleadings of the respective parties in their final amended form shall be printed in the record on appeal, and that copies of the pleadings in their earlier forms shall be transmitted to the Court of Appeals along with the physical exhibits for detailed inspection of any or all of such earlier pleadings by said court should that become necessary.

It is further stipulated that in lieu of printing in full detail in the record on appeal the various pleadings in their earlier forms, summaries of the contents of such pleadings may be substituted in the printed record therefor. The summaries of the contents of the pleadings in their earlier forms are as follows:

106 Civil Action No. 4382.

(a) Automotive filed its Complaint on June 15, 1942, against Precision, Larson and Carlsen, alleging inter alia infringement of its patents Nos. 2,279,792 and 2,283,888 in violation of a certain contract of December 20, 1940 (Defendants' Exhibit 4) and praying for injunctive relief and for an accounting of profits and damages.

(b) On July 22, 1942, before defendants had answered, Automotive filed an Amended Complaint which was the

same as its original Complaint but alleged, in addition, infringement of its patent No. 2,269,503.

(c) On August 6, 1942, the Answer of Defendants to the Amended Complaint was filed, denying infringement and violation of the contract of December 20, 1940 (Defendants' Exhibit 4), charging plaintiff with unclear hands in inserting claims in the pending applications of two of the patents to allegedly cover defendants' commercial device and in attempting to monopolize the manufacture and sale of torque wrenches, and alleging that plaintiff's remedy for patent infringement by Precision's manufacture of wrenches for the United States and its agents lay in suit against the United States in the Court of Claims.

(d) On November 30, 1942, Automotive filed its Amended and Supplemental Complaint which was the same as its Amended Complaint except that reissue patent No. 22,219 was substituted for original patent No. 2,269,503. This final amended form of the Complaint shall be printed in full in the record on appeal.

107. (e) On December 14, 1942, the Answer of Defendants to Amended and Supplemental Complaint was filed, which was similar in form to its previous answer but alleged, in addition, that the agreement of December 20, 1940 (Defendants' Exhibit 4) was void in violation of the Sherman Act and that Precision had acquired intervening rights with respect to Reissue Patent No. 22,219.

(f) On December 30, 1942, defendants filed an Amendment to Answer to Amended and Supplemental Complaint adding an additional paragraph to their previous answer in which it was alleged that the contract of December 20, 1940 (Defendants' Exhibit 4) was in restraint of trade under the Sherman Anti-Trust Act because plaintiff did not have any valid patents to support such a restraint in interstate commerce. The amendment further alleged various grounds of invalidity of the patents in suit.

(g) On January 25, 1943 Judge Igou entered an order upon plaintiff's motion dismissing the Complaint without prejudice with respect to the defendant Carlsen.

(h) On February 8, 1943, the Amended Answer of Defendants to Amended and Supplemental Complaint was filed. This amended answer shall be printed in full in the record on appeal.

Civil Action No. 4451.

(a) Snap-On Tools Corporation filed a Petition for Declaratory Decree against Automotive on July 6, 1942.

alleging inter alia that an actual controversy existed
108 between Snap-On and Automotive with respect to patent No. 2,279,792 and with respect to an agreement of December 20, 1940. (Defendant's Exhibit 5) and that said patent was invalid and not infringed, that said agreement had not been violated by Snap-On, and prayed that said patent be held invalid, that respondent be enjoined from suing or threatening Snap-On's customers with respect to infringement of said patent.

(b) On July 21, 1942, Snap-On filed an Amended Petition for Declaratory Decree which was substantially the same as its original petition except that it also included patent No. 2,283,888 also owned by Automotive.

(c) On July 31, 1942, Snap-On filed a Second Amended Petition for Declaratory Decree which was similar to its earlier forms of petition but included in addition patent No. 2,269,503, also owned by Automotive, and alleged in paragraph (30) as follows:

“(30) Petitioner alleges, upon information and belief, that respondent procured title to the application which matured into the aforesaid Larson patent No. 2,279,792 by charging the patentee, Kenneth R. Larson, with the crime of perjury which allegedly had been committed by said Larson and certain witnesses for said Larson in the testimony given by said witnesses under oath before a Notary Public in a proceedings pending in the United States Patent Office and known as Interference No. 77565, and by threatening said Larson with prosecution for perjury and by offering to conceal the commission of the charged crime and the evidence thereof upon the condition that said Larson would transfer to respondent said application and all title to the invention therein set forth; and petitioner alleges, upon information and belief, that respondent acquired title to the Larson application and the invention therein set forth and other considerations from said Larson and the Precision Instrument Mfg. Company according to the terms of an agreement between respondent and the said Larson and the Precision Instrument Mfg. Co., entered into on to-wit December 20, 1940 per attached
109 copy appended hereto as Exhibit No. 6; that the said contracts appended hereunto as Exhibits 4 and 6 were, upon information and belief, entered into under duress exerted by the respondent and to compound the criminal offense of perjury in violation of the criminal statute of the State of Illinois; wherefore said transactions and re-

spondent's pretended title to the aforesaid Larson patent No. 2,279,792 is void; petitioner further alleges, upon information and belief, that as a condition to the transfer of the title to the patent application eventuating into the said Larson patent No. 2,279,792, respondent demanded of petitioner the execution of the agreement hereunto appended as Exhibit No. 4 as part of the consideration for the compounding of the crime of perjury and petitioner was thereby compelled to execute the agreement hereunto appended as Exhibit 4 in violation of and contrary to the subsisting agreement between petitioner and said Kenneth R. Larson appended hereunto as Exhibit No. 5.

The Second Amended Petition further alleged that Automotive had conducted itself with unclean hands in procuring title to the Larson patent application, in inserting claims in the applications maturing into patents Nos. 2,279,792 and 2,283,888 to cover Snap-On's allegedly new wrench and in threatening Snap-On and Precision with action for patent infringement. In addition to the relief prayed for in its earlier petitions, Snap-On also prayed that patent No. 2,269,503 be declared invalid and not infringed, that Automotive be decreed not to be the owner of patent No. 2,279,792, that the contract of December 20, 1940 (Defendants' Exhibit 5) be declared null and void, and that Automotive be enjoined from instituting suits under said patents in suit because of the alleged unclean hands of Automotive in procuring said patents.

(d) Automotive, on September 23, 1942, filed an Answer to Second Amended Petition for Declaratory Decree and Counterclaims. In the answer Automotive admitted that an actual controversy existed between Snap-On and Automotive and alleged inter alia that patents Nos. 2,269,503, 2,279,792 and 2,283,888 were valid and infringed by Snap-On and that Snap-On had violated its contract of December 20, 1940 (Defendants' Exhibit 5), denied that Snap-On had the right to question or contest in any way the validity of said patents, or any of them, denied that said contracts of December 20, 1940 (Defendants' Exhibits 4 and 5) were entered into under duress or to compound perjury, and denied each and every allegation contained in Paragraph (30) of said Second Amended Petition.

Automotive filed two counterclaims. In the first counterclaim Automotive alleged inter alia infringement of its patents No. 2,269,503, 2,279,792 and 2,283,888 in violation

of the contract of December 20, 1940 (Defendants' Exhibit 5) by Snap-On. In the second counterclaim Automotive charged Snap-On with infringement of patent No. 1,936,612, also owned by Automotive and relating to a piston pin bearing hone; and with respect to said counterclaims Automotive prayed for injunctive relief against further infringement by Snap-On of said Letters Patent and for an accounting of profits and damages.

(e) On September 8, 1942, Precision intervened in Civil Action No. 4451 and filed an answer to Automotive's first counterclaim. In its answer, which was in substantially the same form as its answer filed in Civil Action No. 4382, Precision, as intervenor, denied infringement of patents Nos. 2,269,503, 2,279,792 and 2,283,888, and charged Automotive with unclean hands in inserting claims in the pending applications of two of the patents in suit to allegedly cover Precision's commercial device and in attempting to monopolize the manufacture and sale of torque wrenches.

(f) On November 23, 1942, Automotive filed its Amended and Supplemental First Counterclaim which was substantially the same as its first counterclaim as originally filed except that Reissue patent No. 22,219 was substituted for original patent No. 2,269,503. This Amended and Supplemental First Counterclaim shall be printed in full in the record on appeal.

(g) Snap-On, on December 14, 1942, filed the Answer of Petitioner to Respondent's Amended First and Second Counterclaims. With respect to the first counterclaim, Snap-On denied infringement and validity of the patents in suit and violation of the contract of December 20, 1940 (Defendants' Exhibit 5) and alleged that said agreement was void in violation of the Sherman Act and for the reasons set forth in certain paragraphs, including Paragraph (30), of its Second Amended Petition. With respect to the second counterclaim on the hone patent, Snap-On denied infringement and validity. Snap-On further prayed that each of the counterclaims be dismissed.

(h) Precision, as intervenor, also on December 14, 1942, filed the Answer of Intervenor to Respondent's Amended and Supplemental First Counterclaim, denying infringement of the torque wrench patents in suit and violation of the contract of December 20, 1940 (Defendants' Exhibit 4), and alleging that said contract was void in violation of the Sherman Act and that Automotive came

into court with unclean hands in inserting claims in the pending applications and the reissue application of the patents in suit to allegedly cover defendants' commercial device, and in attempting to monopolize the manufacture and sale of torque wrenches.

412 (i) On January 13, 1943, Automotive filed a Motion to Dismiss Certain Portions of Second Amended Petition and Petitioner's Answer to Respondent's First Counterclaim, and also filed a Motion to Dismiss Certain Portions of Intervenor's Answer to Respondent's First Counterclaim, the portions sought to be dismissed relating to the question of validity, the allegations of unclean hands, the allegations with respect to intervening rights, the allegations that Automotive's remedy lay in a suit against the United States in the Court of Claims, the allegations with respect to violation of the Sherman Act by the provisions of the contracts of December 20, 1940 (Defendants' Exhibits 4 and 5), and with respect to the allegations charging Automotive with coercion and compounding of a felony in view of the alleged perjury of Larson and his other corroborating witnesses. With respect to these motions, counsel for the respective parties filed memoranda. These motions were never decided by the District Court.

(j) On March 1, 1943, while Automotive's Motions to Dismiss were pending, Snap-On filed its Third Amended Petition for Declaratory Decree. This Third Amended Petition shall be printed in full in the record on appeal.

(k) Precision as intervenor, also on March 1, 1943, filed its Amended Answer of Intervenor to Respondent's Amended and Supplemental First Counterclaim. This amended answer shall be printed in full in the record on appeal.

413 (l) Finally, on March 10, 1943, Automotive filed its Answer to Third Amended Petition for Declaratory Decree, which Answer shall be printed in full in the record on appeal.

Davis, Lindsey, Smith & Shonts,
*Attorneys for Automotive Maintenance
Machinery Co.*

Casper W. Ooms,
*Attorney for Precision Instrument Manu-
facturing Company and Kenneth B. Larson.*

Will Freeman,
Attorneys for Snap-On Tools Corporation.

Chicago, Illinois,
August 5, 1943.

114 And on, to wit, the 1st day of March, 1943 came the respondent in Civil Action No. 4451 by its attorneys and filed in the Clerk's office of said Court its certain Motion for Order Transferring Civil Action No. 4451 to Executive Committee for Reassignment in words and figures following, to wit:

115 IN THE UNITED STATES DISTRICT COURT.
(Caption—4451)

MOTION.

Now comes Automotive Maintenance Machinery Co., respondent in the above-entitled action, and in accordance with Rule 42(a) of the Rules of Civil Procedure and with the established practice of this District Court, moves this Honorable Court for an order transferring the above-entitled action to the Executive Committee of this District Court for reassignment to the Honorable Judge Michael L. Igoe.

In support of this motion respondent shows this Honorable Court:

1. That on June 15, 1942, respondent, Automotive Maintenance Machinery Co., filed a Complaint in this District Court against Precision Instrument Manufacturing Company and Kenneth R. Larson charging patent infringement and praying injunctive relief and an accounting. That said action was given Civil Action No. 4382 and was assigned to Judge Michael L. Igoe.

116 2. That thereafter on July 6, 1942, petitioner, Snap-On Tools Corporation, commenced the instant action by filing a petition for declaratory decree against respondent, claiming noninfringement and invalidity of respondent's patents and invalidity of a certain contract between the parties. That said action was given Civil Action No. 4451 and was assigned to Your Honor.

3. That on September 8, 1942, Precision Instrument Manufacturing Company, only one of the defendants in the earlier filed action No. 4382 before Judge Igoe, intervened in the present action No. 4451.

4. That on September 23, 1942, respondent filed its answer to the petition for declaratory decree and also filed counterclaims charging petitioner with patent infringement and praying injunctive relief and an accounting.

5. That the various pleadings filed on behalf of the parties in each of these actions have been amended at various times since the dates of their original filing, with the result that as the pleadings are now constituted they involve common questions or issues of law and fact, which are as follows:

(a) Whether or not respondent's patents Nos. Re. 22,219, 2,279,792 and 2,283,888 are infringed by a certain torque measuring wrench manufactured by intervenor herein and sold by petitioner herein. Therefore, the same patents and the same accused infringing wrench structure are involved in each action.

117 (b) Whether or not certain contracts, Exhibits 4 and 6, between respondent and petitioner and respondent and intervenor are good and valid in law. In each action these contracts are attacked on substantially the same grounds, namely, that they violate the Sherman Anti-Trust Act, and that they were entered into under duress, to compound a felony, to conceal a crime, etc.

(c) Whether or not petitioner and intervenor are estopped to deny validity of the three torque wrench patents in suit.

(d) If the petitioner and intervenor are not estopped to deny validity, whether the torque wrench patents are valid or invalid.

6. In short, the pleadings on file on behalf of respondent and intervenor in this action and on behalf of intervenor in action No. 4382 before Judge Igoe are expressed in substantially the same terminology, the phraseology of the pleadings of those parties in each case apparently following the same pattern.

7. That of the two actions, No. 4382 assigned to Judge Igoe bears the lower docket number and has already been set for trial by Judge Igoe for May 10, 1943. That the instant action has not been set for trial before Your Honor. That the said two actions involving common questions of law and fact should be consolidated for disposition and trial before Judge Igoe so as to avoid unnecessary costs and delay to the parties and unnecessary burden and
118 duplication of effort by this Court.

Davis, Lindsey, Smith & Shonts,

Attorneys for Respondent.

Of Counsel:

Raymond E. Fidler,

George N. Hibben.

119 And afterwards, to wit, on the 1st day of March, 1943, being one of the days of the regular March term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable William H. Holly, District Judge, appears the following entry, to wit:

120 IN THE DISTRICT COURT OF THE UNITED STATES.

(Caption—4451)

Monday, March 1, A. D. 1943.

Present: Honorable William H. Holly, District Judge.

It is ordered by the Court that this cause be and the same is hereby transferred to the Executive Committee of this Court for reassignment to the Calendar of the Honorable Michael L. Igor, Judge of this Court.

121 And afterwards, to wit, on the 3rd day of March, 1943, being one of the days of the regular March term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable John P. Barnes, William H. Holly and Philip L. Sullivan, District Judges, appears the following entry, to wit:

122 DISTRICT COURT OF THE UNITED STATES.

(Caption—4451)

It Is Ordered that the above entitled cause be, and the same is hereby re-assigned to Judge Igor.

Barnes,

Holly,

Philip L. Sullivan,

Executive Committee.

Chicago, March 3, 1943.

123 And afterwards on, to wit, the 9th day of March, 1943 came the Plaintiff-Respondent in Civil Actions No. 4382 and 4451 by its attorneys and filed in the Clerk's office of said Court its certain Motion to Consolidate in words and figures following to wit:

MOTION TO CONSOLIDATE.

New comes Automotive Maintenance Machinery Co., plaintiff-respondent in the above entitled actions, in accordance with Rule 42 (a) of the Rules of Civil Procedure, and moves this Honorable Court for an order consolidating the above-entitled actions for further disposition and trial of any and all of the matters in issue therein.

In support of the foregoing motion it will be shown that both of the above-entitled actions seek relief in respect to infringement of United States Letters Patent Nos. 2,279,792, 2,283,888 and Re. 22,219;

125 that the same accused device is involved in both suits, defendants Precision Instrument Manufacturing Company and Kenneth R. Larson being the manufacturer of said device, and petitioner Snap-On Tools Corporation being the seller and distributor thereof;

that defendant Precision Instrument Manufacturing Company has intervened in the above-entitled action (C. A. No. 4451) brought by Snap-On Tools Corporation against Automotive Maintenance Machinery Co. under the Declaratory Judgment Act;

that the various pleadings filed on behalf of each of the parties in each of these actions have been amended at various times since the dates of their original filing with the result that the pleadings as now constituted involve, inter alia, the following common questions and issues of law and fact:

(a) Whether or not plaintiff-respondent's torque wrench patents Nos. 2,279,792, 2,283,888 and Re. 22,219 are infringed by the accused device;

(b) Whether or not certain contracts attached to the petition filed herein Exhibits 4 and 6 are good and valid at law, said contracts in each of the above-entitled actions being attacked on substantially the same grounds, namely, that they violate the Sherman Antitrust Act and that they were entered into under duress, through extortion, in misprision of a felony and to compound a felony;

126 (c) Whether or not defendant, Kenneth R. Larson, defendant-intervenor, Precision Instrument Man-

ufacturing Company, and petitioner, Snap-On Tools Corporation, are estopped to deny validity of the torque wrench patents in suit;

(d) If said defendants, intervenor and petitioner are not estopped to deny validity of the torque wrench patents in suit, whether said patents are valid or invalid;

(e) Whether or not relief is barred to Automotive Maintenance Machinery Co., plaintiff-respondent, on the ground that it comes before this Court with unclean hands;

(f) Whether or not relief is barred to Automotive Maintenance Machinery Co., plaintiff-respondent, on the ground of intervening rights; and

(g) Whether or not defendants, intervenor and petitioner are entitled to raise the question of fraud in the procurement of the patents in suit;

that the action entitled Automotive Maintenance Machinery Co. vs. Precision Instrument Manufacturing Company and Kenneth R. Larson, Civil Action No. 4382, has been set for trial before your Honor on May 10, 1943;

127 that both of the above-entitled actions involve common questions of law and fact and should be consolidated for disposition and trial before your Honor so as to avoid unnecessary cost and delay to the parties and unnecessary duplication of effort by this Court; and

that in the above action entitled Snap-On Tools Corporation vs. Automotive Maintenance Machinery Co., Civil Action No. 4451, respondent, Automotive Maintenance Machinery Co., has filed a Second Counterclaim charging infringement of United States Letters Patent No. 1,936,612 by petitioner, Snap-On Tools Corporation, and an answer has been filed by said Snap-On Tools Corporation. This patent relates to bearing honing devices and is not related to the torque wrench patents Nos. 2,279,792, 2,283,888 and Re. 22,219 in suit. Automotive Maintenance Machinery Co., plaintiff-respondent, hereby consents to separation of the issues in respect to said Letters Patent No. 1,936,612 if such separation is deemed advisable by your Honor.

Davis, Lindsey, Smith & Shonts,

Attorneys for Plaintiff-Respondent.

Of Counsel:

• Raymond E. Fidler,

Harry W. Lindsey, Jr.

Chicago, Illinois,

March 8, 1943.

128 And on, to wit, the 9th day of March, 1943 came the Plaintiff-Respondent in Civil Actions Nos. 4382 and 4451 by its attorneys and filed in the Clerk's office of said Court its certain Motion for An Order Directing Kenneth R. Larson to Appear and Testify in words and figures following, to wit:

129 IN THE UNITED STATES DISTRICT COURT.

(Caption—4382, 4451)

MOTION FOR AN ORDER DIRECTING KENNETH R. LARSON TO APPEAR AND TESTIFY.

Now comes Automotive Maintenance Machinery Co., plaintiff-respondent in the above-entitled actions, and moves this Honorable Court for an Order directing Kenneth R. Larson

(1) to appear before this Court on a day certain and give testimony for purposes of discovery under Rules 26 and 43 of the Rules of Civil Procedure; and

(2) to bring with him and to produce under Rule 45 of the Rules of Civil Procedure at said certain time for purposes of testimony that he may give at said time the following documents:

130 (a) All of the original copy of all transcribed testimony taken on behalf of said Kenneth R. Larson in a certain interference proceeding No. 77,565, Kenneth R. Larson vs. Herman W. Zimmerman, pending in the United States Patent Office during the years 1939 and 1940, which testimony was taken before Esther Meltzer, a Notary Public in and for Cook County, Illinois, at the offices of Harry C. Alberts, 38 South Dearborn Street, Chicago, Illinois, beginning on or about October 24, 1940 and ending on or about November 4, 1940, which testimony was stenographically reported by one Thomas Rafferty of 10 North Clark Street, Chicago, Illinois, including the transcribed testimony given by witnesses for and on behalf of said Kenneth R. Larson, namely, said Kenneth R. Larson, Walter A. Carlsen, C. C. Whittaker, L. Hymes, Richard Barrgren, Henry C. Schultz, William Ladendorf, Harold Blake and R. C. Ford.

(b) All original physical and documentary exhibits referred to or offered in evidence or marked for identification during the taking of and forming a part of the above-

identified testimony on behalf of said Kenneth R. Larson in said Interference No. 77,565, and all original documents of which any of said documentary exhibits is a copy.

(c) Each and every notebook or other means employed by said Thomas Rafterty in taking down stenographically and reporting said testimony given by said above-named witnesses in said Interference No. 77,565 before said Notary Public, Esther Meltzer, at the offices of Harry C. Alberts, 38 South Dearborn Street, Chicago, Illinois, at the time above stated.

In support of the foregoing motion, plaintiff-respondent shows this Honorable Court:

That in the present actions which involve patent infringement plaintiff-respondent has charged defendant Kenneth R. Larson and defendant-intervenor, Precision Instrument Manufacturing Company, and petitioner, Snap-On Tools Corporation, with infringement of the Zimmerman patents Nos. Re. 22,219 and 2,283,888 and the Larson patent No. 2,279,792 owned by plaintiff-respondent;

131 That Kenneth R. Larson, defendant herein, is president of defendant-intervenor, Precision Instrument Manufacturing Company;

That all the parties to the present actions were, in December, 1940, involved in an interference proceeding in the United States Patent Office, No. 77,565, between the applications which became the Larson and Zimmerman patents in suit, the Larson application at that time being owned by petitioner, and the Zimmerman applications being owned by plaintiff-respondent. The question involved in said interference was whether Larson or Zimmerman was the first inventor in point of time of the common subject matter disclosed by said applications;

That after testimony had been taken on behalf of the party Larson, the interference was terminated by Larson conceding priority of invention to Zimmerman, and the contracts Exhibits 4 and 6, attached to the pleadings herein, were entered into between plaintiff-respondent and petitioner, and between plaintiff-respondent and the defendant Larson and defendant-intervenor, respectively, on December 20, 1940;

That by said contracts, Exhibits 4 and 6, plaintiff-respondent granted said Kenneth R. Larson, said Precision Instrument Manufacturing Company, and said Snap-On Tools Corporation licenses to manufacture and sell 6,000 wrenches of the type disclosed in and coming within the

scope of claims of the applications involved in the 132 interference and then on order from customers of the parties, and said Kenneth R. Larson, said Precision Instrument Manufacturing Company, and said Snap-On Tools Corporation agreed that they would not after disposition of said 6,000 wrenches infringe the claims of the Larson and Zimmerman applications or any patents that might issue thereon, and they further agreed not to contest the validity of the claims of said patents. That said 6,000 wrenches have been disposed of by said parties and they are now manufacturing and selling wrenches which are infringements of said patents in violation of said contracts;

That by the express provisions of the contracts, Exhibits 4 and 6, said Kenneth R. Larson, said Precision Instrument Manufacturing Company, and said Snap-On Tools Corporation are estopped to contest the validity of any of the claims of the patents in suit;

That in an attempt to escape from the binding effect of said contracts, Exhibits 4 and 6, said Kenneth R. Larson, said Precision Instrument Manufacturing Company, and said Snap-On Tools Corporation allege in their pleadings that said contracts are invalid and void, and to support said allegations of invalidity of said contracts said parties charge and aver that said Kenneth R. Larson, defendant herein, did commit perjury in violation of the criminal statutes of the United States (Title 18 U. S. Code, Sec. 133 231) and of the Criminal Statutes of the State of Illinois (Chapter 38, Ill. Rev. Stat., Sec. 473) in giving testimony in his own behalf in said Interference No. 77,565, and charge plaintiff-respondent herein and its agents with the crime of extortion by an informer in violation of the United States Criminal Statute, Title 18 U. S. Code, Sec. 251, with the crime of misprision of felony in violation of the United States Criminal Statute, Title 18 U. S. Code, Sec. 251, and with the crime of compounding a felony in violation of Illinois Criminal Statute, Chapter 38, Ill. Rev. Stat., Sec. 135, all of said alleged crimes being alleged as part of the transactions involving said agreements Exhibits 4 and 6;

That Automotive Maintenance Machinery Co., plaintiff-respondent herein, desires discovery of pertinent and material facts in respect to the issues raised by the pleadings herein, including said allegations of perjury and said charges of extortion, misprision and compounding a felony.

in order to fully protect its rights herein and defend itself against such charges;

That said allegations of perjury and said charges against said Automotive Maintenance Machinery Co. and its agents are criminal in nature;

That said allegations of perjury and said charges against Automotive Maintenance Machinery Co. and its agents,

134 being criminal in nature, any discovery in respect to the same should be under the control and direction of this Honorable Court in order that the rights of all parties concerned may be fully protected and your Honor may determine the propriety and admissibility of evidence sought to be deduced; and

That the discovery being at least in part directed toward criminal matters involving alleged and charged violations of United States and Illinois Criminal Statutes, of which cognizance should be taken by the proper Federal and State authorities, the examination for discovery should be made before your Honor in open court rather than by deposition in order that your Honor may be fully apprised as soon as possible as to the exact nature and basis of the criminal charges involved and may promptly direct the taking of such action as your Honor may deem necessary under the circumstances.

In support of section (2) of the foregoing motion, it will also be shown:

That copies of the testimony, exhibits and reporter's notebooks hereby sought to be produced have to do with the aforesaid testimony given by said Kenneth R. Larson in said Patent Office Interference No. 77,565, which testimony is alleged in the pleadings filed by defendants, Kenneth R. Larson and Precision Instrument Manufacturing

Company, and petitioner, Snap-On Tools Corporation, 135 to be perjured testimony; wherefore said copies of testimony, said exhibits and said notebooks are relevant and material to the issues and their production is necessary for proper inquiry for discovery, not only for purposes of these suits but for purposes of any further inquiry or action that this Court may take in the premises.

Davis, Lindsey, Smith & Shonts,

Attorneys for Plaintiff-Respondent.

Of Counsel:

Raymond E. Fidler,

Harry W. Lindsey, Jr.

Chicago, Illinois,

March 8, 1943.

136 And on, to-wit, the 9th day of March, 1943, came the attorneys for the plaintiff-respondent, Automotive Maintenance Machinery Co. and filed in the Clerk's office of said Court their certain Petition in Support of Plaintiff-Respondent's "Motion for an Order Directing Kenneth R. Larson to Appear and Testify" in words and figures following, to-wit:

137 IN THE UNITED STATES DISTRICT COURT.
 (Caption—4382, 4451)

PETITION ON BEHALF OF AUTOMOTIVE'S ATTORNEYS IN SUPPORT OF PLAINTIFF-RESPONDENT'S "MOTION FOR AN ORDER DIRECTING KENNETH R. LARSON TO APPEAR AND TESTIFY".

We, Raymond E. Fidler and Harry W. Lindsey, Jr., of counsel for plaintiff-respondent, Automotive Maintenance Machinery Co. (called "Automotive"), file this petition and respectfully plead with the Court to grant Plaintiff's Motion for an Order directing the party Kenneth R. Larson, President of defendant-intervenor, Precision Instrument Mfg. Co. (called "Precision"), to appear and testify.

138 In support of this petition we say:

We are members of the firm of Davis, Lindsey, Smith & Shonts, attorneys for Automotive. Mr. Harry C. Alberts, attorney for petitioner, Snap-On Tools Corporation, (called "Snap-On"), was the attorney of record on behalf of Larson in the Larson vs. Zimmerman Interference referred to in the Motion. We represented Zimmerman whose applications (which later matured into two of the patents in suit) were owned by Automotive. Mr. Alberts took the depositions of Larson and eight other persons on behalf of Larson. With respect to the negotiations resulting in the settlement agreement (Exh. 4) between Automotive and Snap-On, the then legal owner of the Larson application, Snap-On was represented by Mr. Harry C. Alberts, and with respect to the negotiations resulting in the settlement agreement (Exh. 6) between Automotive and Precision and Larson, Precision and Lar-

son were represented by Mr. M. K. Hobbs of the well-known and reputable firm of Haight, Goldstein and Hobbs.

Throughout the negotiations, neither we, as attorneys or "agents" for Automotive, nor, to our best knowledge and belief, any officer of Automotive, including Mr. Frederick G. Wacker, its President, had any contact with any officer of either Snap-On or Precision or with Larson concerning settlement.

Precision's, Larson's and Snap-On's pleadings in these actions aver that Larson committed perjury in giving evidence in the interference and they also charge Automotive and "its agents" with compounding the felony. We, 139 to the best of our knowledge and belief, were the only attorneys or "agents" of Automotive who took any active part in negotiating the settlement agreements and all of our contacts regarding said negotiations were with Mr. Hobbs and Mr. Alberts, except, as we now recall, Mr. Edward Haight, of the Haight firm, was present with Mr. Hobbs at one conference which Mr. Fidler had with Mr. Hobbs.

Seemingly, Precision, Larson and Snap-On all accuse us of compounding the felony of perjury.

In the interest of justice, not only on behalf of Automotive, but on our own behalf, we submit that it is necessary to proceed under the discovery rule to determine with preciseness just which "agents" (Mr. Fidler, Mr. Lindsey or some officer or employee) of Automotive, Snap-On, Precision and Larson accuse of having compounded the crime of perjury and just what acts, threats and other things Automotive and its "agents" are accused of having done or committed in furtherance of the compounding of said crime.

We respectfully urge that it is important to have discovery by examination of Larson before the Court in the interest of orderly procedure and prompt justice. Should Larson's deposition be taken and his counsel instruct him not to answer questions propounded, repeated appearances before the Court on motions to compel Larson to answer would be necessary. Further, the Court would be in a position to advise Larson of his constitutional privileges, if any, and protect, if proper and in the interest of justice, the interests, rights and reputations of the various parties and their attorneys and also of Larson's eight 140 corroborating witnesses. Still further, if we are positively named as the "agents" who compounded the

Motion for Separate Trial.

felony, we would become witnesses and in all probability would feel constrained to withdraw from the cases, at least temporarily, as soon as—and if—we are specified as the "agents" of Automotive, and then have other counsel represent Automotive and us.

We recognize that this petition may be unusual. But the situation presented by the averments in Snap-On's, Precision's and Larson's pleadings that Larson committed perjury and that Automotive and "its agents" compounded the crime (and also committed other penal offenses) warrants, we believe, this petition.

Respectfully submitted,

Raymond E. Fidler,
Harry W. Lindsey, Jr.

March 5, 1943.

141 And afterwards on, to wit, the 23rd day of March, 1943, came Precision Instrument Manufacturing Co. and Kenneth R. Larson, Defendants in Civil Action No. 4382 and Snap-On Tools Corporation, Petitioner in Civil Action No. 4451, by their attorneys and filed in the Clerk's office of said Court their certain Motion for Separate Trial, in words and figures following, to wit:

142 IN THE UNITED STATES DISTRICT COURT.

(Caption—4382 and 4451)

MOTION FOR SEPARATE TRIAL

Now comes Precision Instrument Manufacturing Co. and Kenneth R. Larson, Defendants, in Civil Action No. 4382, and Snap-On Tools Corporation, Petitioner in Civil Action No. 4451, and make this Motion for a separate trial of the issue raised in the pleadings in the two specified causes with respect to the validity of the contracts, Exhibits 4 and 6, which are at issue in this cause, and in support of this Motion movants say:

These suits are brought in part upon two contracts executed on December 20, 1940, by all of the parties to these two causes. In the pleadings these contracts are attacked by Defendants and Petitioner on the ground that they were procured in violation of law by virtue of the matters set forth in paragraph 7B of Defendants'

amended answer, and paragraph 30 of Petitioner's third amended petition for declaratory decree, and that because of the matters therein alleged Plaintiff comes into this court with unclean hands and should be dismissed therefrom.

Plaintiff is relying upon said agreements in part to foreclose Defendants and Petitioner from contesting the validity of the patents in suit.

The proofs to be presented upon that issue are separate and preliminary to the proofs to be made in the patent cases which are also made by the pleadings herein, and can be more conveniently tried separately from the patent cases.

Plaintiff has filed a Motion herein asking for separate discovery with respect to the issue to which this Motion for separate trial relates.

Wherefore Defendants and Petitioner make this Motion for a separate trial of the issue of the validity of the documents, Exhibits 4 and 6, and ask that this Motion

144 for separate trial be continued for hearing upon March 27, 1943, at which time several Motions of Plaintiff now pending are set for hearing.

Casper W. Ooms,

*Attorney for Defendants, Precision
Instrument Manufacturing Co. and
Kenneth R. Larson.*

Harry C. Alberts,

Bair & Freeman,

*Attorneys for Snap-On Tools Cor-
poration.*

March 22, 1943.

145 And afterwards, to wit, on the 27th day of March, 1943, being one of the days of the regular March term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Michael L. Igou, District Judge, appears the following entry, to wit:

146

IN THE UNITED STATES DISTRICT COURT.

(Caption—4382, 4451)

ORDER.

Upon application of plaintiff, Automotive Maintenance Machinery Co., for consolidation of Civil Action No. 4382 with Civil Action No. 4451, and upon consideration of the arguments made by the respective parties to these causes,

It Is Hereby Ordered that Civil Action No. 4451 be consolidated with Civil Action No. 4382 for all purposes and the case proceed in this Court under the title of Automotive Maintenance Machinery Co., Plaintiff vs. Precision Instrument Manufacturing Company, Kenneth R. Larson, and Snap-On Tools Corporation, Defendants, Civil Action No. 4382, and that Snap-On Tools Corporation be proceeded against as a defendant in said cause.

Enter:

Igoe,

United States District Judge.

March 27, 1943.

148 And afterwards, to wit, on the 27th day of March, 1943, being one of the days of the regular March term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Michael L. Igoe, District Judge, appears the following entry, to wit:

149 IN THE DISTRICT COURT OF THE UNITED STATES.

(Caption—4382)

Saturday, March 27th, A. D. 1943.

Present: Honorable Michael L. Igoe, District Judge.

The Court having heard the arguments of counsel for the parties on the motion for separate trial as to certain of the issues and being fully advised in the premises it is

Ordered that said motion be and the same is hereby allowed and K. R. Larson appears in open Court and his testimony is heard and concluded and it is

Ordered that this cause be and the same is hereby continued to May 10, A. D. 1943. for trial.

150 And afterwards, to wit, on the 20th day of April, 1943, being one of the days of the regular April term of said Court, the record of proceedings thereof, in said entitled cause, before the Honorable Michael L. Igoe, District Judge, appears the following entry, to wit:

151 IN THE UNITED STATES DISTRICT COURT.
(Caption—4382)

ORDER.

Upon motions of defendant, Snap-On Tool Corporation, for leave of Harry C. Alberts to withdraw as attorney for Snap-On Tools Corporation and for a separate trial date of the patent issues raised in the pleadings as distinguished from the issues respecting the validity of the contracts, Exhibits 4 and 6, now set for May 10, 1943, and upon consideration of the arguments made by the respective parties to this cause, and it appearing that Harry C. Alberts shall be a material witness on the issues involving the validity of the contracts, Exhibits 4 and 6, and that Snap-On Tools Corporation is represented by additional counsel of record, Messrs. Bair & Freeman,

It Is Hereby Ordered that leave be and it is hereby given for Harry C. Alberts to withdraw as attorney for Snap-On Tools Corporation.

152 It Is Further Ordered that the patent issues raised by the pleadings in this cause be set for trial on a separate date from the issues involving the validity of the contracts, Exhibits 4 and 6, now set for May 10, 1943.

Enter:

Igoe,

United States District Judge.

April 20, 1943.

153 And afterwards on, to wit, the 3rd day of May, 1943, there was filed in the Clerk's office of said Court a certain Withdrawal of Appearance in words and figures following, to wit:

Withdrawal of Appearance.

154 IN THE UNITED STATES DISTRICT COURT.
 * * (Caption—4382) * *

WITHDRAWAL OF APPEARANCE.

I hereby withdraw as counsel for Snap-On Tools Corporation pursuant to leave of Court.

This withdrawal has been delayed owing to plaintiff's suggestion that defendant, Snap-On Tools Corporation, present an amended answer to plaintiff's first and second counterclaims for the purpose of conforming it to the third amended petition for a declaratory decree filed by Snap-On Tools Corporation, subsequent to the filing of its initial answer to the first and second counterclaims.

Harry C. Alberts.

May 1, 1943.

Proof of Service.

Service of the foregoing Withdrawal of Appearance has been effected by mailing a true and complete copy thereof in a sealed envelope addressed to opposing counsel, Davis, Lindsey, Smith & Shonts, 332 S. Michigan Ave., Chicago, Ill. and to Casper W. Goms, 209 S. La Salle St., Chicago, Ill., attorneys for Precision Instrument Mfg. Co., and to Messrs. Bair & Freeman, present attorneys for Snap-On Tools Corporation, Field Bldg., Chicago, Ill., and deposited at the Main Post Office Annex, this 1st day of May, 1943, with postage prepaid.

Harry C. Alberts.

155 And on, to wit, the 6th day of August, 1943 there were filed in the Clerk's office of said Court certain Plaintiff's Exhibits Nos. 63, 62 and 17, being the Stenographic Transcript of Proceedings and Testimony of Kenneth R. Larson, the Deposition of Walter Carlsen, and the Deposition of Joseph Johnson, portions of which are in words and figures following, to wit:

156 Stenographic Report of Testimony Taken in the above-entitled actions, before Honorable Michael L. Igoe, one of the Judges of said Court, on Saturday, March 27, A. D. 1943.

157 KENNETH R. LARSON, called as a witness herein by the Automotive Maintenance Machinery Co., having been first duly sworn, was examined and testified as follows:

Examination by Mr. Fidler.

Q. Where do you live, Mr. Larson?

The Court: Let us get his name first.

Mr. Fidler: Q. State your name?

A. Kenneth Larson.

Q. And where do you live, Mr. Larson?

A. 1206 Center street, Desplaines, Illinois.

Q. Now, you are the Kenneth R. Larson, one of the defendants in the action of Automotive vs. Precision, No. 4382, are you not?

A. That is right.

Q. And you are also president of Precision Instrument Manufacturing Company, another of the defendants in that case, are you not?

A. I am.

158 Q. And you are also the Kenneth R. Larson who is the patentee of one of the patents involved in this suit?

A. I am.

Q. And you are also the Kenneth R. Larson who was one of the parties involved in the Interference No. 77,565 about which something is said in the pleadings in this case?

A. That is right.

Q. And you are also the Kenneth R. Larson who was one of the parties to an agreement between Automotive, Precision and Larson and which is attached to the Complaint in that case as Exhibit 1?

A. That is right.

Q. Are you not?

A. Yes, sir.

Mr. Fidler: Now your Honor, I say that, except for the use of names, the Answer filed by the Intervenor Precision in the Snap-On case is substantially the same as the Answer in the Precision case, so far as the paragraphs containing the allegations respecting perjury, and I will merely for convenience refer to the paragraph of the Answer in the Precision case in the following questions.

The Court: That is Action 4382?

159 Mr. Fidler: Action 4382. I have that Answer divided into sections, and if your Honor will permit, I will be glad to hand it to you, for ready reference.

The Court: I take it that that is the original Answer that you are talking about. The Answer to Supplemental Complaint, you are not talking about that?

Mr. Fidler: I am talking about the last Answer filed, which is Amended Answer of Defendants to Amended and Supplemental Complaint.

The Court: When was that filed?

Mr. Fidler: That was filed on February 8, 1943.

The Court: All right.

Mr. Lindsey: Here is paragraph 7 b. of the Precision Answer, a copy of it broke down, and this is paragraph 30 and I just thought it would be a little easier for your Honor to follow.

The Court: And the Answer you are talking about is the one filed February 8, 1943?

Mr. Fidler: That is right, your Honor, in the Precision case.

Q. Mr. Larson, did you approve the Amended Answer of defendants to Amended and Supplemental Complaint filed in the case of Automotive Maintenance Machinery Co. vs. Precision Instrument Manufacturing Company, No. 4382 on February 8, 1943?

160 A. Yes.

Q. Did you approve also the Answer filed on behalf of Precision as Intervenor in the Snap-On case?

A. Yes, I did.

Q. Now reading from paragraph 7 b. of the Answer referred to in the Precision case No. 4382, it is stated:

"Defendants allege that the application for Letters Patent No. 2,279,792 (herein called Larson application) was by the United States Patent Office declared to be in interference with the applications for Letters Patent Nos. 2,283,888 and 2,269,503 (herein called Zimmerman applications) in Interference No. 77,565, in which the question to be determined was whether the party Larson had invented the subject matter of certain counts of said Interference prior to the party Zimmerman."

that statement is true, is it not?

A. Yes.

Q. Paragraph 7 b. of the Answer in Action No. 4382, which I have already identified, further states:

"in October, 1940, testimony of several witnesses was taken under oath on behalf of the party Larson at Chicago, Illinois, before Esther Meltzer, a Notary Public commissioned in the State of Illinois";

161 That statement is correct, is it not?

A.: That is right.

Q. The Answer referred to in Action 4382 further states, and I am still speaking with respect to paragraph 7 b.:

"Kenneth R. Larson, one of the witnesses, did then and there knowingly falsely testify on his own behalf under oath, that he had invented and made a wrench embodying the subject matter of the counts then in interference in the year 1934,"—

The Witness: That is right.

Mr. Fidler: Q. (Continuing.)

"and that he had produced several models, which he identified, and a drawing which he identified as having been made prior to the summer of 1936, whereas in fact the wrenches, models, and drawings referred to had not been made until the years 1937 and 1938";

Are those statements in paragraph 7 b. of that Answer true?

A. The statements are true.

Q. The statements which I have just read from paragraph 7 b. of your Answer?

A. That is right.

Q. Are they true?

A. They are true. I said that.

162 The Court: Wait a minute. If you want to look at this Answer, you may, Mr. Witness. Do you want to have a copy of the statements when he is asking you the questions?

He has one now.

Mr. Ooms: We will concede all those facts.

Mr. Freeman: I was going to suggest, to save time, there isn't any question but what this witness gave all the information to Casper Ooms, and as a result of the information given to Casper Ooms, he pleaded it.

The Witness: That is right.

Mr. Freeman: We will admit it.

Mr. Fidler: We are here for discovery, your Honor,

and the witness I think is the one who should speak in these respects.

The Court: All right, proceed.

I don't know whether it is necessary to ask him a separate question as to each paragraph. Why don't you ask him one question as to paragraph 7 b.?

Mr. Fidler: Q. Mr. Larson, I will ask you to read all of paragraph 7 b. of the Answer just identified, in Action 4382, and state whether or not all of the facts stated therein down to the part ending "of the State of Illinois 163 (Chap. 38, Ill. Rev. Stat., sec. 473)" are true?

A. That is true. I read it and it is true.

Q. Now, paragraph 7 b. further states, "Plaintiff and its agents were aware that said testimony was false,"—Now, who were those agents or who are the agents referred to in that statement?

A. That was Mr. Fidler and Mr. Lindsey and Mr. Wacker, as I understand.

Q. Did you ever talk to Mr. Wacker?

A. I never talked to Mr. Wacker at all.

Q. When was the first time that you ever saw Mr. Wacker?

A. I have never seen him that I know of, sir.

Q. Did you ever talk to Mr. Lindsey?

A. I have never talked to Mr. Lindsey.

Q. When was the first time that you ever saw him?

A. I was told this morning that that was Mr. Lindsey as he came in here.

Q. When did you ever talk to me?

A. At Mr. Alberts' office.

Q. And what was that occasion?

A. At the Interference proceedings.

Q. That was during the taking of testimony?

A. That is right.

164 Q. In the Interference?

A. That is right.

Q. At which time I attended during direct examination and cross-examined you?

A. That is right.

Q. You will also remember that I met you at Mr. Blake's home one evening—

A. That is right.

Q. In respect to a wrench that he had testified about?

A. That is right.

Q. And that is the only time that I had ever seen you?

A. Yes.

Q. Is that correct?

A. Yes, sir.

Q. Now, what is the basis of that statement that I just read, namely, that "Plaintiff and its agents were aware that said testimony was false"?

A. I was told by my counsel, Mr. Hobbs.

Q. You were? You say Mr. Hobbs?

A. That is right, and Mr. Alberts also, who is Snap-On Tools' attorney.

Q. What was the occasion of Mr. Alberts telling you that?

A. That they were aware of it when he was called to their office, and the first time that he had known that 165 there was any false testimony given, that is, Mr. Alberts, the first time he had even known anything of it is when he was told in your office.

Q. When did you tell Mr. Alberts the first time, that you had testified knowingly falsely in that Interference?

A. After he had come back from your office.

Q. How long after?

A. I believe it was the same day.

Q. And what did you tell Mr. Alberts in that respect? Give the exact words as near as you can?

A. I told him yes, that we did not make the drawing, that the man I said had made the drawing did not make the drawing.

Q. Is that the best answer you can give us, that those are the exact words?

A. As near as I can recall, yes, sir.

Q. What were the exact words that Mr. Alberts used in telling you that "Plaintiff and its agents were aware that said testimony was false"?

A. I don't remember exactly.

Q. You don't remember that?

A. No, I don't.

Q. Now, this conference that you mentioned, after 166 which Mr. Alberts told you what had been said and you told Mr. Alberts that you had testified falsely, who was present at the conference with Mr. Alberts at that time?

A. Mr. Johnson and Mr. Carlsen, myself and Mr. Alberts.

Q. Oh, that was after that conference and it wasn't a

conference where I alone was in conference with Mr. Alberts, Mr. Larson?

The Witness: What do you mean, sir? I did not understand that question?

Mr. Fidler: Q. How many conferences did Mr. Alberts have at which I was present?

A. I do not know, sir.

The Court: You mean in his presence?

The Witness: I have never been with this man in conference, Mr. Fidler.

Mr. Fidler: Q. Did Mr. Alberts tell you how many conferences that he had with me?

A. No, I don't recall that he did.

Q. Did Mr. Alberts tell you of a conference that he had with me alone and no one present except Mr. Alberts and myself?

A. Not that I recall, no.

Q. Mr. Alberts told you of a conference—or, the 167 only conference that Mr. Alberts told you about was one in which Mr. Johnson and Mr. Wacker were present, is that correct?

A. I don't know.

Q. Well, what was the conference that Mr. Alberts referred to, at which time you told Mr. Alberts that you had perjured yourself?

A. At the one where, as I said, Mr. Johnson, yourself, and Mr. Wacker was there, I don't know who else.

Q. Do you know whether Mr. Thomasma was there?

A. I was told that he was there, yes.

Q. Now, paragraph 7 b. of the Answer in Action 4382 further states in respect to Plaintiff and its agents, "and charged said Larson with the crime of perjury and threatened to institute prosecution against said Larson unless Defendants transferred to Plaintiff the Larson application and the sum of \$500, and executed the agreement, Exhibit 1." Were you ever told anything like that or so charged by Automotive or any of its agents?

A. No.

Q. How did you get your information respecting that charge?

A. Through my counsel, Mr. Hobbs.

Q. Mr. Hobbs only?

168 A. That is right.

Q. And what did Mr. Hobbs say when he so informed you?

A. He said it was a serious offense, that if we didn't sign this contract that we would be put in jail.

Q. Well, my question was with respect to the allegation that Automotive and its agents charged you with the crime of perjury and threatened to institute prosecution against you unless you transferred your Application?

A. That is right.

Q. (Continuing.) —and paid the sum of \$500 and executed the agreement?

A. That is right.

Q. Now, who told you that Automotive and its agents so charged you and threatened you?

A. Mr. Hobbs.

Q. And what were his exact words, as near as you can remember it, when he told you that?

A. He said that if we didn't sign this contract and make this settlement that you were to turn loose the dogs and I would go to jail. As near as I can recall, those are the exact words that he used.

Q. And that is the basis of your statement that you were charged with perjury and threatened with prosecution?

169 A. That is right.

Q. Now, did Mr. Hobbs tell you who it was that was going to turn loose the dogs of war?

A. Yes.

Q. Who did Mr. Hobbs mention?

A. Mr. Fidler.

Q. Anyone else?

A. Not that I recall, no.

Q. Now, did you admit to Mr. Alberts that you had committed perjury, before Mr. Hobbs was retained as your attorney?

A. Yes.

Q. You did?

A. Yes, sir.

Q. Do you remember how long before?

A. The same day that Mr. Hobbs was retained as our attorney.

Q. That was the same day of the conference, then, between Mr. Alberts, Mr. Johnson, Mr. Wacker and myself and possibly others?

A. I do not remember exactly. It was either the same day or the next day.

Q. Who represented you as attorney in Interference No. 77,565?

A. Mr. Alberts.

170 Q. And how long did Mr. Alberts continue to represent you as attorney in that Interference?

A. Until the time of the conference in your office when he said that there had been false testimony.

Q. And who, then, was retained to represent you?

A. Mr. Hobbs.

Q. Did you tell Mr. Alberts and Mr. Hobbs at the same time, that you had committed perjury, or at separate times?

A. At separate times.

Q. Who did you tell, first?

A. Mr. Alberts.

Q. Now, you know Mr. Joe Johnson, president of, or one of the officers at least, or Snap-On Tools Corporation, do you not?

A. Yes, sir.

Q. Did you tell Mr. Johnson that, that you had committed perjury?

A. At the same time that I told Mr. Alberts. They were both in the office together.

Q. Now, let's see, had they just come from a conference in my office with Mr. Wacker, at that time?

A. As I was told, yes.

Q. Now further referring to paragraph 7 b. of the 171 Answer in Action 4382, it is stated: "and Plaintiff promised to withhold its complaint and suppress the evidence of said perjury if the Larson application and the sum of \$500 were transferred to Plaintiff and Defendants executed the agreement, Exhibit 1." Automotive made no such promise to you personally, did it?

A. No, sir.

Q. How do you know that any such thing was promised or how can you say it?

A. Mr. Hobbs told me that if we would sign this agreement, all evidence, all documents, everything that had transpired or had transpired before that would be burned, there would be one big bonfire and they would be burned.

Q. Mr. Hobbs told you that?

A. Yes, sir.

Q. That is Mr. M. K. Hobbs of the firm of Haight, Goldstein & Hobbs?

- A. That is right.
- Q. You are sure of that?
- A. Yes, sir, I am positive of that, sir, and as I understand, the bonfire had been held. I guess it hasn't.
- Q. Did Mr. Hobbs tell you the basis of that statement?
- A. Yes, sir.
- 172 Q. What was the basis?
- A. If we would sign this contract.
- Q. That Automotive would withhold its complaint and suppress the evidence?
- A. That is right.
- Q. If you would sign the contract?
- A. Yes, sir.
- Q. Sign the contract—
- A. That is right.
- Q. (Continuing.) —which is Exhibit 1 attached to the Complaint in Action 4382?
- A. That is right.
- Q. And who told Mr. Hobbs that?
- A. I don't know. As I recall, I think he said that you had or Mr. Lindsey, I don't know for sure, but no doubt Mr. Hobbs could testify as to that.
- Q. Now, Mr. Larson, did Mr. Ooms get the information contained in Paragraph 7 b. of the Answer in Action 4382 from you or from Mr. Hobbs?
- A. From both.
- Q. You know that of your own knowledge?
- A. Yes.
- Q. How did he secure that information?
- A. I think you better ask Mr. Ooms. I don't know exactly. I told him my share of it and I am sure Mr. Hobbs has told him his.
- 173 Q. Were you present when Mr. Hobbs gave the information to Mr. Ooms?
- A. No. I wasn't.
- Q. Were you told by anyone what the information was that Mr. Hobbs had given to Mr. Ooms?
- A. I knew what the information was, yes.
- Q. Well, were you told by anyone what the information was that Mr. Hobbs gave to Mr. Ooms?
- A. I don't remember.
- Q. You don't remember?
- A. No, sir.
- Q. Now, paragraph 7 b. of the Answer in Action 4382

further states: "and plaintiff did thereafter suppress the evidence of said perjury and withhold making its complaint to the proper officers." Do you know that to be a fact?

A. Yes, that is a fact.

Q. What is the basis of your statement?

A. That nothing has ever been done up to this time.

Q. Well, what was done in respect to suppression of evidence, by anybody?

A. What do you mean?

Q. Well, the answer says that "plaintiff did thereafter suppress the evidence of said perjury".

A. That is right. There was a settlement made, a contract signed between the two parties.

174 Q. Oh, that is what you mean by the suppression of the evidence, is that correct?

A. As I understood it, yes.

Q. Now, that agreement which is Exhibit 1 in Action 4382, you accepted that in good faith, did you not?

A. To the extent that it was sign it or else, yes.

Q. Well, you went ahead and operated under the agreement, didn't you?

A. That is right.

Q. And you sold 6,000 wrenches under the agreement, didn't you?

A. That is right.

Q. And you operated under it in good faith to that extent, didn't you?

A. That is right.

Q. And the only time you made any complaint respecting it was in connection with these suits?

A. That is right.

Q. Isn't that correct?

A. That is right.

Q. Now, by whom were you represented in the negotiations leading up to the agreement, Exhibit 1 attached to the Complaint in Action 4382?

A. Mr. Hobbs.

Q. And by Mr. Hobbs only?

A. Yes, sir.

175 Q. Mr. Alberts had nothing to do with it?

A. Nothing to do with the decision or myself, no.

Q. Now, it is a fact, is it not, that all of the contacts

made with Automobile or its agents on your behalf were made by Mr. Hobbs?

A. By Mr. Hobbs, that is right.

Q. And all of the contacts on your behalf in connection with the settlement agreement were made by Mr. Hobbs, is that correct?

A. On my behalf, that is right.

Q. Now, as I understand your testimony, Mr. Hobbs did tell you that Automotive and its agents charged you with the crime of perjury and threatened to institute prosecution against you unless you did certain things?

A. Yes, sir; to the extent that Mr. Hobbs wanted to withdraw as my attorney unless I would sign the contract.

Q. When was that?

A. I don't know the exact date, but I believe it can be produced here in letters, evidence.

Q. Well, did Mr. Hobbs think that the contract was fair that you entered into, the settlement contract?

Mr. Ooms: I object to it. He can't possibly know what Mr. Hobbs thought about it.

Mr. Lindsey: Ask him if Mr. Hobbs told him.

176 Mr. Fidler: Q. Were you advised by Mr. Hobbs that that contract was fair?

A. Yes, he said it would be better to sign the contract than go to jail.

Q. Did Mr. Hobbs tell you that the contract that you signed in settlement of the Interference No. 77,565 was a fair contract?

A. I answered that. I said that—

Q. Well, answer yes or no. Did he tell you that?

A. Yes, sir.

Q. He did— Is Mr. Hobbs still your attorney?

A. No.

Q. When did he cease to be your attorney?

A. As soon as this settlement was made.

Q. Now, I call your attention to paragraph 30 of the Third Amended-Petition in the Snap-On case and ask you to read the part thereof from the beginning down to the parenthetical part, "Chap. 38, Ill. Rev. Stat., sec. 473", and I ask you—

The Court: Well, give him the papers, if you want him to read from them.

Mr. Fidler: I am sorry. I thought you had it.

The Witness: No, I had this—

(Mr. Fidler hands paper to the witness.)

Mr. Freeman: That is the pleading put in by Snap-On, and I am not too sure with respect to it, but I don't think he should be examined with regard to the pleadings put in by Snap-On.

The Court: Why not?

Mr. Fidler: The cases are consolidated and this witness is directly pleaded as a perjurer.

Mr. Freeman: Well, we have no objection to the witness telling all he knows about it. Go right ahead.

Mr. Fidler: I will ask you—

The Court: Wait a minute. See if he has finished reading it.

The Witness: What shall I read here?

The Court: The entire first paragraph,—the first six paragraphs.

Mr. Fidler: The first six paragraphs.

The Witness: Is there any question, sir?

Mr. Fidler: Q. You have just read the parts—

A. That is right, yes, sir.

Q. —that I referred to?

A. That is right.

Q. Now, did you approve the inclusion of those statements in that petition?

A. Yes.

Q. With whom did you discuss that matter, in so approving the inclusion of those statements?

178 A. My counsel, Mr. Ooms.

Q. Did you discuss it with Mr. Alberts?

A. With Mr. Alberts and Mr. Freeman, yes, sir.

Q. And I understand your testimony to be that you first made known the facts there alleged in the first part of paragraph 30 of the Third Amended Petition to Mr. Alberts on the day or the day after the conference at my office between Mr. Alberts, Mr. Johnson, Mr. Wacker, myself and possibly others?

A. That is right.

Q. Will you please give the exact words, as near as you can, used by Mr. Alberts in informing you of the conference that had taken place at that time at my office? I am talking about the conference now at which time Mr. Johnson and Mr. Wacker were present.

A. Mr. Carlsen, who was the Secretary-Treasurer of the Precision Instrument Manufacturing Company, and

myself were called to Mr. Alberts office and there he told us what had happened at your office. He said that there was—he had read a good sized affidavit from Mr. Thomasma saying that he had made the drawing, and other things, and what did I have to say about it? And I said, "Yes", that that was true.

Q. What else did Mr. Alberts say?

A. He said at the time that he would have to withdraw, draw as counsel in the case, that I would have to get a lawyer of my own and he suggested several names and submitted them, and I picked Mr. Hobbs out and we went to see him.

Q. And that is all he said in telling you about that conference with Mr. Johnson and Mr. Wacker and myself?

A. As near as I recall, yes.

Q. What did Mr. Johnson say about the conferences?

A. As I recall, he did not have much to say.

Q. Did he make any comments?

A. Not that I remember, no.

Q. What did he have to say when you told him that your testimony was false and knowingly so?

A. I left shortly after that, sir.

Q. He didn't say anything?

A. Not that I remember, no.

Q. Now, after Mr. Alberts said that you had better get another lawyer, did he have anything to say, anything further to say?

A. Not that I remember, no.

Q. And from that time on you were represented solely by Mr. Hobbs?

A. That is right.

Q. And not by Mr. Alberts?

A. That is right.

180 Q. Now, you have said that Mr. Alberts told you what happened at that conference at my office, at which time Mr. Joe Johnson and Mr. Wacker were present. Now, what was it that Mr. Alberts said that happened?

A. Why don't you ask Mr. Alberts? I can remember all the things that were said, sir.

Q. Well, tell us the best you remember?

A. Simply that there was false testimony given, that you had brought this up to them and they said "How about it?"

Q. Who said there was false testimony given?

A. Mr. Alberts told me that.

Q. And what was the basis of Mr. Alberts' statement to you?

A. What had been said at your office and the testimony that had been given by George Thomasma.

Q. You mean that Mr. Alberts told you that on that day he read the statement that had been made by Thomasma?

A. I don't recall it.

Q. But he did tell you he heard Thomasma make a statement orally in the presence of Mr. Alberts and Mr. Joe Johnson, didn't he?

A. I don't remember.

Q. You don't remember?

A. I do not.

181 Q. Well then, what was the basis of that statement that Mr. Alberts made, wasn't it what he had heard Thomasma say?

A. As I recall, it was, but I do not remember it definitely, sir.

Q. Now, Mr. Alberts hasn't represented you as attorney since that day in my office when the conference between him and Mr. Johnson took place, has he?

A. In that Interference case of any kind, no.

Q. In any capacity?

A. As a patent attorney, yes.

Q. He has?

A. Yes.

Q. Oh, he never did cease representing you?

A. Oh, yes.

Q. Well, how long did he stop representing you?

A. I don't know exactly.

Q. Well, give us an idea?

A. There have been other patents that I have applied for since that, that he has taken care of for me.

Q. Well, give us an idea as to what time, that he ceased representing you?

A. I would say several months.

Q. Well, how many months?

A. I don't know exactly.

Q. Three months?

A. I don't know.

182 Q. You don't know?

A. No.

Q. During what period of time was it?

A. During the winter time.

Q. Well, was it during the period of those negotiations with respect to the agreement?

A. I said that when I told him that there had been false testimony given he was not my attorney then until after the agreements were all settled.

Q. Oh, then he became your attorney again?

A. Not immediately, no, sir.

Q. Well, how long after?

A. I don't know exactly. No doubt his records will show exactly when it was started again.

Q. And what was the occasion of him resuming as your attorney?

A. New patents.

Q. Oh, new Applications for patents?

A. That is right.

Q. And he has represented you continuously since that time?

A. On patent applications, yes, sir.

Q. And has he represented Precision, also?

A. Not to my knowledge, no.

Q. Oh, it has been you personally?

A. That is right.

Q. And not Precision?

183 A. That is right.

Q. Now referring back to paragraph 7 b. of your Answer in Action 4382, the first part which I previously quoted refers to the testimony of several witnesses taken under oath on your behalf in the Interference?

A. Yes.

Q. Now, those several witnesses were Walter A. Carlsen, C. C. Whitaker, L. Hymes, Richard Berggren, Henry C. Schultz, William Ladendorf, Harold Blake and Ronald C. Ford, isn't that correct?

A. That is right.

Q. Who prepared the Preliminary Statement for you in the Interference No. 77,565?

A. Mr. Alberts.

Q. And was that statement based upon what your corroborating witnesses were going to say?

A. That is right.

Q. You had talked to those witnesses, including Mr. Carlsen and others above-mentioned, before you filed your preliminary statement?

A. That is right.

Q. Did Mr. Alberts talk to them, too?

A. No, sir.

Q. Did you talk to Mr. Alberts about your preliminary statement before you filed it?

184 A. Yes, sir.

Q. And what information did you give Mr. Alberts in that respect?

A. Simply as stated there.

Q. As stated in your Preliminary Statement?—

A. That is right.

Q. —filed in the Interference?

A. That is right.

Q. Did you tell Mr. Alberts that you had talked to your corroborating witnesses, at the time that you gave him that information?

A. I did.

Q. Did you tell Mr. Alberts at the time who those corroborating witnesses were?

A. I do not remember. I might have and then I might not—I do not remember exactly.

Q. Did you tell him that Mr. Carlsen was going to be one of them?

A. I don't recall.

Q. You don't recall. Did you tell him that Mr. Ford was going to be one of them?

A. I don't recall, sir.

Q. Did you tell him that Mr. Schultz was going to be one of them?

A. Not that I remember.

185 Q. Who made the decision as to the dates to be set up in your Preliminary Statement?

A. Mr. Thomasma made several of them.

Q. Mr. Thomasma?

A. That is right.

Q. Anyone else?

A. Mostly Mr. Thomasma.

Q. You didn't have anything to do with it?

A. A couple of them, yes.

Q. What dates did you have to do with?

A. The date on the drawing.—

Q. What other date?

A. (Continuing.) —which I was told by Mr. Thomasma was plenty far enough back.

Q. Oh— Now, who was Mr. Thomasma?

A. He was a man who had done some work for me.

Q. He was also an employe of Automotive Maintenance Machinery Co., was he not?

A. Yes, he was.

Q. And you knew that, didn't you?

A. I did.

Q. And you knew that you and Mr. Thomasma worked on the wrench at a time when he was still working for Automotive, did you not?

186 A. That is right.

Q. And you knew, at the time you incorporated Precision Instrument Manufacturing Company, that Mr. Thomasma was one of the employees of Automotive at that time, didn't you?

A. That is right.

Q. And you knew that Mr. Thomasma was one of the incorporators of Precision?

A. Yes, sir.

Q. And one of the officers of Precision?

A. That is right.

Q. And after Precision was formed as a corporation, Mr. Thomasma continued to work for Automotive, didn't he?

A. That is right.

Q. And you knew that Mr. Thomasma had worked at Automotive in connection with the development of this torque wrench, didn't you?

A. I did not.

Q. You did not?

A. I did not.

Q. What did he tell you was the basis of his information?

A. That he had an idea.

Q. That he had an idea?

A. That is right.

Q. Automotive was supplying wrenches to Snap-On at one time, weren't they?

A. Yes.

187 Q. And that was back in 1937, wasn't it?

A. I believe it was.

Q. And Thomasma knew about that, didn't he?

A. No doubt.

Q. That is, George B. Thomasma?

A. That is right.

Q. Well, didn't he tell you that he knew about it?

A. Yes, I believe he did.

Q. Now, at the time you prepared your Preliminary Statement, you knew the construction of Automotive's wrench that they were supplying to Snap-On at that time, didn't you?

A. Yes, I did.

Q. And where did you get that information?

A. From a wrench.

Q. And where did you get that wrench?

A. From Mr. Thomasma.

Q. You didn't get anything from Snap-On on that?

A. No.

Q. And where did Mr. Thomasma get the wrench?

A. I don't know.

Q. And did Mr. Alberts see that wrench when the Preliminary Statement was filed?

A. Which wrench?

188 Q. That Thomasma gave you, of Automotive's?

A. No, sir.

Q. Mr. Alberts never saw that wrench?

A. No.

Q. Now, when you filed your Application involved in the Interference back in October, 1938, were you familiar with the wrench that Automotive was supplying to Snap-On at that time?

A. Yes, sir.

Q. And how long had you known about that wrench?

A. I do not remember exactly. A short time.

Q. Well, pretty close to a year, wasn't it?

A. No.

Q. Well, when you first met Thomasma you learned about it, didn't you?

A. No.

Q. Now, how long before you filed your Application did you contact Snap-On in an attempt to sell your wrench to them?

The Witness: Say that again—

Mr. Fidler: Q. How long before you filed your Application did you contact Snap-On in an attempt to sell your wrench to them?

The Witness: When was the Application filed?

Mr. Fidler: In October, 1938, October 11th I believe.
189 A. I believe it was in April or the early part of May that I contacted them the first time.

Q. And at that time Automotive was supplying its wrench to Snap-On?

A. Yes, that is right.

Q. And at that time Thomasma was working with you in connection with your wrench?

A. That is right.

Q. And trying to interest Snap-On in it?

A. He was trying to interest Snap-On?

Q. Yes.

A. No.

Q. Who tried to interest Snap-On?

A. I did.

Q. You alone?

A. Me alone.

Q. And do you know about Mr. Thomasma ever having gone to Snap-On in connection with Automotive wrenches?

A. Not that I recall. I believe that—yes, I do, too. He said that he had gone up there on some wrenches that were defective and he had to do some repairing on them.

Q. Was there any time that you were ever in Automotive's plant at night with Thomasma?

A. Yes, I was.

Q. And what was the occasion of that?

A. I bought a piece of machinery from them and I wanted some oversize equipment for it, and I was as far as the shipping room, and I believe there is a building in the back that was a boiler room or something, and these things were picked up out of the corner in a store room there, as I recall, and I paid for them.

Q. When was that?

A. Either during 1936 or 1937. I don't know exactly.

Q. How long had you known George B. Thomasma?

A. I got acquainted with him, as I recall, in about 1935 or 1936.

Q. What was the occasion of that?

A. I bought a pin hole boring machine from him that was manufactured by the Automotive Maintenance Machinery Company and he said that it was a very high grade tool, which we found out was very much the opposite. We had considerable trouble with it and it was taken back

several times for correction, and it never turned out extra satisfactorily.

Q. Now, at the time you filed your Application involved in the Interference, was Mr. Carlsen associated with you?

A. Yes.

Q. That is, Walter Carlsen?

A. Yes.

Q. (Continuing.) One of your corroborating witnesses?

191. A. That is right.

Q. Now, you knew at the time that you filed your Application that you were going to supply your wrenches to Snap-On, did you not?

A. That is right.

Q. And up to that time, Snap-On had been faking Automotive's torque wrenches of similar kind, isn't that correct?

A. That is right.

Q. Who was attorney for Snap-On at that time?

A. Mr. Alberts.

Q. That is, Mr. Harry C. Alberts?

A. That is right.

Q. And did he know those facts, too, about your going to supply to Snap-On your wrench?

A. Yes, sir.

Q. And did he know, also, that Automotive was supplying its wrench to Snap-On?

A. I imagine he did.

Q. Well, in that connection, did you ever see any Automotive wrenches in Mr. Alberts' office?

A. No.

Q. Now, you entered into a contract with Snap-On, personally, you did?

A. Yes, sir.

192. Q. (Continuing.) On September 28th, 1938, which contract is attached to the Third Amended Petition as Exhibit 5. I ask you whether or not this is a copy of the contract just referred to? (Mr. Fidler hands document to the witness.)

Mr. Alberts: May I have a copy?

(Mr. Fidler hands document to Mr. Alberts.)

A. Yes, that is right.

Mr. Fidler: Q. Who prepared that contract?

A. Mr. Alberts.

Q. That is, Mr. Harry C. Alberts?

A. Harry C. Alberts.

Q. (Continuing.) Attorney for Snap-On?

A. Yes, sir.

Q. Now, the contract, Exhibit 3, just referred to, provides for a defense or litigation fund?

A. That is right, yes, sir.

Q. Doesn't it?

A. Yes, sir.

Q. Why was that?

A. Because I was a poor man and I had absolutely no funds whatever. I had spent considerable time working on this tool and I wanted to manufacture it myself rather than turn it over to them on a royalty basis, or manufacture it for them in their plant.

Q. Why were you thinking about a defense fund 193 at that time?

A. Because that was set up in there by Mr. Alberts and said that was necessary.

Q. Well, why did Mr. Alberts want that in there?

A. Because it was a Patent Application and not a patent.

Q. Well, did Automotive have anything to do with that?

A. Not that I know of, no.

Q. Well, weren't you afraid that Automotive might take some action in respect to the wrench, for infringement, for some patents that they might get?

A. No.

Q. You had no idea of that?

A. No.

Q. Even though the wrench was of the same type of wrench as Automotive's?

A. I did not consider that it was of the same type.

Q. You did not?

A. No, sir.

Q. You thought it was a different type?

A. Yes, sir.

Q. How was it different?

A. Because it was constructed entirely different.

Q. Wasn't the only real difference a tail piece on the end of the spring bar for actuating the gauge?

A. In so far as the patent wording is concerned, yes, but as far as the actual manufacture of the wrench is 194 concerned it was entirely different.

Q. But in so far as the principle of operation and

the mechanics of the thing, your wrench was the same as Automotive's except for that tail piece, isn't that correct?

A. It was declared that in the Interference, as I understand.

Q. Now, when you filed your Application, all of the claims in it were limited to that tail piece, were they not?

A. I don't know.

Q. You don't know?

A. I don't know.

Q. Do you know that every claim in that Application filed was so limited and didn't cover the Automotive wrench?

A. I don't know.

Q. You don't know?

A. No, sir. I am not a patent attorney.

Q. Well, did you discuss the claims of your Application with Mr. Alberts at the time that your Application was filed?

A. As I recall, I did, yes.

Q. Did he tell you what they meant?

A. Roughly, yes.

Q. And did he explain to you that they were limited to that tail piece on the end of the spring bar for actuating the mechanism?

A. Not that I recall.

Q. Did he explain to you that one of them read on the Automotive wrench that Automotive was supplying to Snap-On at that time?

A. Not that I remember.

Q. You don't remember?

A. No.

Q. Did you see a copy of Zimmerman's Preliminary Statement in the Interference before you started to take testimony?

A. I don't remember.

Q. You don't remember?

A. No.

Q. Did you ever see a copy of Zimmerman's Preliminary Statement?

A. I don't remember that I ever did, no.

Q. Where did you get your information as to the time you would have to go back to, to beat Zimmerman.

A. From Mr. Thomasma.

Q. From Mr. Thomasma?

A. That is right.

Q. Well, how did he know?

A. When we told him that there was an Interference, then he gave us considerable information on it and, in fact, as I recall it, it was before that, that he seemed to have considerable information.

196 Q. Then, he did give you some information about the development of Automotive's wrench, did he?

A. Yes.

Q. Sufficient for you to prepare a Preliminary Statement in the Interference?

A. That is right.

Q. To beat Zimmerman?

A. That is right.

Q. And he gave it to you and Mr. Alberts, did he?

A. No, sir. To me.

Q. To you only?

A. He had never met Mr. Alberts or knew anything about him.

Q. Never?

A. Mr. Alberts did not know anything about him, I should say.

Q. Well, did you pass the information on to Mr. Alberts after it was given to you by Mr. Thomasma?

A. That is right.

Q. And did you tell Mr. Alberts where you got your information?

A. No, sir.

Q. Now, have you produced here a drawing about which you testified in the Interference as having been made in 1936?

The Witness: Here in court, you mean?

Mr. Fidler: Q. Yes. If so, will you please produce it?

135 Mr. Ooms: I have produced it, your Honor. He has been under no order to produce it.

The Court: Now are you going into a different subject? Let us take our recess. How much longer are you going to be on this man?

Mr. Fidler: I think probably about 10 or 15 minutes.

The Court: And that will conclude?

Mr. Fidler: My direct examination.

The Court: And what other evidence or examination is there to go into?

Mr. Fidler: I haven't anything in mind at this time, except discovery with respect to this witness.

The Court: And you say you can conclude that within 10 or 15 minutes?

Mr. Fidler: I think so. Well, maybe a half hour. I wouldn't like to tie myself down definitely to the time.

The Court: And that will conclude with this man?

Mr. Fidler: In so far as the questions I have to ask.

Mr. Freeman: We have none.

The Court: If that is true, I can work until 1:00 o'clock, and let us end it. Otherwise, we will have to take a recess until next week some time. If you can finish at 1:00 o'clock, we will stay here and finish it.

Mr. Fidler: Now, you have produced a drawing which is marked Exhibit 27 in Interference No. 77,565?

198 The Witness: That is right.

Mr. Fidler: Q. And that is the drawing about which you falsely testified in the Interference?

A. That is right.

Q. And when, in fact, was this drawing made?

A. During 1938, as I recall.

Q. And who made it?

A. Mr. George B. Thomasina.

Q. And your testimony in the Interference was that who made it?

A. A high school boy.

Q. Can you produce the first wrench that you testified as having been made in 1934?

A. Yes. They are all there on the board.

Q. Will you please do so?

A. Yes.

Q. Now you have produced a board containing several wrenches?

A. That is right.

Q. Which wrench was it on here which you said was made in 1934, whereas it was made at some later time?

A. This wrench, (indicating), and these two here (indicating).

Q. And those are the wrenches that are marked 199 Exhibits 7, 10 and H on the board?

A. Yes, sir.

Q. Is that correct?

A. Yes, sir.

Q. When were those wrenches made, actually?

A. During 1937.

Q. What time in 1937?

A. During the Fall of the year.

Q. What time in the Fall?

A. I do not know exactly.

Q. Who prepared this exhibit, this board of wrenches?

A. I did.

Q. By yourself?

A. Yes, sir.

Q. Did anyone offer any suggestions as to how it would be prepared?

A. Mr. Alberts said to mount them on a board, that is all.

Q. Did Mr. Alberts see the wrenches before they were mounted on the board?

A. Yes.

Q. Did he know the testimony you were going to give about them before they were mounted on the board?

A. As I recall he did, yes, sir.

Q. Now, Mr. Schultz, in testifying, produced some records respecting castings which he said were made back in 1934, is that correct?

A. That is right.

200 Q. And did you talk to Mr. Schultz before he testified?

A. Yes, I did.

Q. And did he say that those records covered castings made back in 1934?

A. That is right.

Q. And that they were wrench castings?

A. That is right.

Q. And when he told you that, did you know that it was not true?

A. I knew it, yes, sir.

Q. Did you tell him any different?

A. No.

Q. Did he know it wasn't true?

A. As I recall, he did, yes.

Q. Mr. Schultz made or his company has made practically all the castings that you have used?

A. That is right.

Q. About how many has that been altogether?

A. I don't know exactly.

Q. Now, Mr. Ford, whose name appears on this drawing as one of the witnesses who signed it—

A. Yes, sir.

Q. —I believe he testified that he signed that drawing back in May, 1936, did he not?

A. I think he did, yes, sir.

201 Q. And did you talk to him before he testified in the Interference?

A. I did, yes.

Q. And did he tell you or did you tell him that that was the date when he signed it?

A. I told him that.

Q. Well, when did he actually sign it?

A. Well, after 1938, sir, when the drawing was made.

Q. Well, was it just before he testified?

A. No, sir. It was some time before that.

Q. Well, then, you knew that testimony that Mr. Ford gave was not true?

A. Yes, I knew it was not.

Q. And did Mr. Ford know it wasn't true?

A. There is no dispute about the testimony—

Q. Well, did Mr. Ford know that that testimony wasn't true?

A. Yes.

Q. When he gave it?

A. As I recall it, yes.

Q. How about Mr. Carlsen? He testified too?

A. Yes.

Q. He testified, did he not, about the making of wrenches back in 1934, 1935 and 1936?

A. That is right.

202 Q. And did you talk to him about that testimony before he testified?

A. Yes, sir.

Q. And did he tell you about the making of wrenches, at that time, in 1934, 1935 and in 1936?

A. No. I told him.

Q. You told him?

A. That is right.

Q. When did you first meet Mr. Carlsen?

A. About 1934, 1933 or 1934.

Q. That is when you first met him?

A. Oh yes.

Q. You are sure it wasn't in 1938?

A. Oh no.

Q. When Mr. Carlsen testified in the Interference that he saw the wrenches back in 1934, 1935 and 1936—

- A. Yes.
- Q. —did he know that that testimony wasn't true?
- A. Yes.
- Q. You knew it wasn't true, didn't you?
- A. Yes, I knew it wasn't true.
- Q. Did he knowingly testify as to those untrue facts?
- A. Maybe you better ask him.
- Q. Well, do you know?
- 203 A. I know that he knew, yes.
- Q. Is that also true of Mr. Schultz?
- A. Yes.
- Q. Is that also true of Mr. Ford?
- A. Yes.
- Q. Is that true of all of the witnesses that testified on your behalf in the Interference?
- A. No.
- Q. It wasn't true of Mr. Ladendorf, was it?
- A. No.
- Q. Anyone else it wasn't true of?
- A. Or Mr. Blake either.
- Q. Mr. Blake?
- A. That is right.
- Q. Well, why wasn't it true of Mr. Ladendorf?
- A. Because the wrench had been sold to him and he had the purchase there of when it was sold. That is all he said.
- Q. That is all he testified?
- A. Yes.
- Q. How about Mr. Blake?
- A. The same thing.
- Q. Did Mr. Alberts talk to these witnesses before they were put on the stand?
- A. I don't remember.
- Q. You don't know?
- 204 A. No, I don't, sir.
- Q. Well, how did Mr. Alberts know what the witnesses were going to testify about?
- A. He didn't.
- Q. Well, he examined them, didn't he?
- A. Not that I remember.
- Q. Well, who examined you in giving testimony in the Interference?
- A. You did.
- Q. Oh, I did?

A. That is right.

Q. Mr. Alberts didn't?

A. Yes. He asked some questions, as I recall. Yes, he did.

Q. Well, who examined Mr. Carlsen, besides me?

A. In the office, the day the testimony was given?

Q. Yes, when the testimony was being taken?

A. Mr. Alberts and yourself.

Q. And is that true of all of the witnesses?

A. Yes, it is.

Q. Well, where did Mr. Alberts get his information to examine those witnesses?

The Witness: I don't understand the question, sir?

Mr. Fidler: Q. Well, how did he know how to proceed with the examination? Did he have any ideas as to what they would testify?

A. Simply what I had told him.

Q. Oh, what you had told him?

A. That is right.

Q. And nothing else?

A. No.

Q. Did you have anything to do with the reporter's books that have been destroyed?

A. No, sir.

Q. Did you ever see that reporter after the taking of your testimony?

A. No, sir.

Q. Did you ever discuss anything with anyone about it, after the taking of your testimony?

A. No, sir.

Mr. Fidler: Those are all the questions I have, your Honor.

Mr. Freeman: No cross examination.

206 There is no ruling on this. All you wanted to do was to have this testimony taken?

Mr. Lindsey: That is right, and we wanted your Honor to preserve the testimony in the event your Honor wanted to take any action in the matter from a criminal standpoint. Of course, this man has committed perjury, and that is a violation of the criminal statute, not only of the Federal statute but of the Illinois statute. He stands here as a confessed perjurer. He has taken the stand.

The Court: Well, if I took any action as a court, I

would refer the transcript to the District Attorney and let him look into it.

Mr. Lindsey: That is correct, your Honor.

The Court: I am not going to pick out any individual here. I am not sitting as an Examining Magistrate, but, if I did anything, that is what I would do.

Deposition of Walter Carlsen taken in the above-entitled cause by the Automotive Maintenance Machinery Co., before Thomas B. Goodwill, a Notary Public of Cook County, Illinois, on Tuesday, April 13, 1943, at Suite 1400 Field Building, 135 South LaSalle Street, Chicago, Illinois, pursuant to Notice and proof of service shown thereon:

209 State of Illinois }
County of Cook } ss.

WALTER CARLSEN, called as a witness herein by the Automotive Maintenance Machinery Co., Plaintiff, being first duly sworn by the Notary Public, was examined and testified as follows:

Examination by Mr. Fidler.

Q. Will you please state your name?

A. Walter Carlsen.

Q. And your age?

A. 51.

Q. And your residence?

A. 660 Person Street, Des Plaines, Illinois.

Q. And your occupation?

A. What do they call it—a manufacturer.

Q. What company are you connected with?

A. Precision Instrument Manufacturing Company.

Q. In what capacity?

A. Secretary-Treasurer.

Q. How long have you been Secretary and Treasurer of that company?

A. Since December, 1938.

Q. Did you have anything to do with the incorporation of Precision Instrument Manufacturing Company?

A. Yes, sir, I did.

Q. What was that? What did you have to do with the incorporation of that company?

210 A. I collected the funds to get the company organized.

Q. And when was that?

A. During November and part of December, of 1938. I think those are the right months. It may have been a month before then.

Q. Do you know Kenneth R. Larson?

A. Yes, I do.

Q. How long have you known Mr. Larson?

A. Since either October, 1938, or November. I don't know which month it was.

Mr. Ooms: Q. What year was that?

A. 1938.

Mr. Fidler. Q. Under what circumstances did you come to know him?

A. He was in the automobile parts business just about half block or a block away. It was on the same street. I had gone in there several times for some parts.

Q. Do you know George B. Thomasma?

A. I do.

Q. Did Mr. Thomasma have anything to do with the meeting between you and Mr. Larson?

211 A. No. I had met Mr. Larson about twice before; I met him through Thomasma. I met him formally through Thomasma.

Q. What were the circumstances under which you undertook to get together the funds for Precision Instrument Manufacturing Company?

A. Thomasma and Larson had invented a wrench and they didn't know how to market it, so they came and asked me. First Mrs. Thomasma approached my wife, and she said to send her husband over to see me, that I could probably do something about it, and so he came over to see me one evening and he took me over to Larson's house and we talked it over, there.

Q. At that time do you know whether or not any connection had been made with the Snap-On Tools Corporation by Mr. Larson?

A. Up until that time I did not know, no.

Q. When did you first know that Mr. Larson was dealing with Snap-On Tools Corporation?

A. About the middle of December.

Mr. Freeman: Q. Of what year?

A. 1938.

Mr. Fidler: Q. Are you familiar with the Interference proceeding No. 77,565, in which an Application of Mr. Larson was involved with an Application of Mr. Herman W. Zimmerman?

A. Yes.

Q. When did you first hear of that Interference?

A. I do not remember the exact date.

Q. Was it about the date that the interference was declared?

A. Yes.

Q. How did you first come to hear about it?

A. I believe we had a notice of interference.

Q. From the United States Patent Office?

A. I think so.

Q. And when you got that notice of interference, what did you do?

A. I didn't do anything.

Q. Did you discuss it with Mr. Larson?

A. Not at the time, no.

Q. Do you know whether Mr. Larson did anything with it?

A. I think he took it down to see Mr. Alberts.

Q. You didn't go along?

A. No.

Q. Do you recollect that Mr. Larson had to prepare and file a paper called a Preliminary Statement?

A. No.

Q. Do you know whether or not Mr. Larson filed any paper in the Interference, in which he set forth the dates when he did certain things with respect to his invention?

A. No, I don't.

Q. Did you help Mr. Larson prepare any papers to be filed in the Interference?

A. No.

Q. Did anyone help Mr. Larson prepare any such papers in the Interference?

A. That I do not know.

Q. You testified as a witness on behalf of Mr. Larson in that Interference No. 77,565, did you not?

A. I did.

Q. When did you first know that you would be a witness in that Interference?

A. At the time just before the depositions were to be taken.

Q. And under what circumstances did you come to know that fact?

A. By just discussing it with Mr. Larson.

Q. What was said by Mr. Larson and you, during that discussion?

A. That has been so long ago, it is pretty hard to remember.

Q. Well, did you discuss what you were going to testify to in the Interference?

A. Not at that time, no.

214 Q. Did you ever discuss that with Mr. Larson, that is, what you were going to testify to in the Interference?

A. Yes, yes.

Q. And when did you discuss that with Mr. Larson?

A. About a day or two before the deposition was taken.

Q. And at that time what did you discuss with Mr. Larson respecting your testimony?

A. Oh, just about the dates of the wrench, and so on, and so forth.

Q. Did Mr. Larson have any paper or anything that he had filed in the Interference, before him at the time he discussed that matter with you?

A. No.

Q. When you and Mr. Larson discussed the testimony you were to give, was anyone else present?

A. No.

Q. Was the testimony that you actually gave in the Interference discussed at that meeting or conference with Mr. Larson respecting the testimony?

A. Yes.

Q. And did you have any written memorandum of any kind—

A. No.

Q. —at that time?

A. No.

Q. Did Mr. Larson tell you at that time the dates 215 that he had to prove in the Interference?

A. Yes.

Q. And had you any idea as to those dates prior to that time?

A. No.

Q. Did you tell Mr. Larson at that meeting two or three days before you testified, what you would testify to in the Interference?

A. Did I tell Mr. Larson?.

Q. Yes.

A. I told him I would testify to the things that we had discussed, yes.

Q. What were those things that you discussed?

A. I can't recall them now. They were mostly in regard to dates.

Q. Well, where did you get your basis for the testimony that you told Mr. Larson you would give?

A. From the discussions that Mr. Larson and I had.

Q. From the fact that Mr. Larson told you what dates he had to prove in the Interference?

A. That is right.

Q. Now, I believe that you testified in the Interference to the effect that you saw a wrench that Mr. Larson had in 1934 and that you happened to see that wrench in connection with some repair work that Mr. Larson did on your car, a car that you were using in connection with a 216 pickle patch that you were operating?.

A. That is right.

Q. Was that testimony true?

A. No.

Q. Did you know that it was not true?

A. Yes.

Q. At the time you gave it?

A. I did.

Q. Why did you give such testimony?

A. Well, because it was best for our company, we were just a small place and we were kind of in a spot, we would lose everything if we just hadn't manufactured something. We didn't know at the time what the consequences would be.

Q. Did you tell Mr. Larson you were going to so testify, during that meeting two or three days before you did testify?

A. I did.

Q. What did he say about that?

A. We had discussed it, pro and con and felt like that is what we should say.

Q. I believe you also testified to having seen wrenches that Mr. Larson had during the years 1935 and 1936; was that testimony true?

A. No.

217 Q. Did you know that it wasn't true, when you gave it?

A. I did.

Q. And you gave that testimony which was not true, for the same reasons that you gave the testimony respecting the 1934 wrench?

A. That is right.

Q. When did you first see a wrench that Mr. Larson has worked out?

A. I believe it was in November, 1938.

Q. Was that before or after the time that you started getting together the money for the Company?

A. Before. I can't be positive of those dates, but it was in about that time somewhere.

Q. Well, did Mr. Larson have an agreement at that time with Snap-On Tools Corporation?

A. I did not see that agreement until past the middle of December; in fact, I didn't see the agreement. He just told me that he had one.

Q. Do you recollect whether or not you ever saw a letter that was written by Mr. Myers of the Snap-On Tools Corporation to Mr. Larson, stating or confirming the fact that they were giving Precision Instrument Manufacturing—giving to Mr. Larson an order for a certain number of wrenches?

A. Yes.

218 Q. Did you see that letter about the time it was received, or later?

A. I do not remember when it was received, but I had that letter in my possession shortly after I started getting the money together for the Precision Instrument.

Q. Do you know the purpose in writing that letter?

A. I do not.

Q. What did you use it for?

A. I used in to convince the people that we were trying to sell stock to that we had orders for the tools.

Q. Did it serve its purpose?

A. It did.

Q. Now, do you recollect that several other witnesses besides yourself and Mr. Larson testified on behalf of Mr. Larson in Interference No. 77,565?

A. Yes, I do.

Q. Did you talk to any of those witnesses before they testified?

A. No.

Q. Did you hear the testimony of any of those witnesses?

A. No.

Q. Were you at the office of Mr. Alberts at any time during the taking of the testimony of those other witnesses?

A. I was.

219 Q. Where were you in that office?

A. Mostly in the hall, outside of the office.

Q. And why were you there?

A. They were supposed to take my testimony that day.

Q. You say you were mostly in the hall. Where were you the remainder of the time?

A. In the office.

Q. What part of the office?

A. The outer office.

Q. Next to the room where the testimony was being taken?

A. Yes.

Q. How much of the time during the taking of that testimony were you present?

A. I think it was one full day.

Q. Just before you testified?

A. Yes.

Q. Were you present while Mr. Larson was testifying?

A. No.

Q. Were you present in Mr. Alberts' office while Mr. Schultz was testifying?

A. No.

Q. Were you present in Mr. Alberts' office while Mr. Ford was testifying?

A. Yes.

Q. Did you hear his testimony?

220 A. No.

Q. Did you hear any part of his testimony?

A. Oh, a word here and there.

Q. Did you know what Mr. Ford was testifying to at that time?

A. No.

Q. Did you talk to Mr. Ford before he testified?

A. No.

Q. Did you talk to Mr. Schultz before he testified?

A. No.

Q. What was the name of Mr. Schultz's company?

A. Ravenswood Brass Foundry.

Q. And what connection, if any, did he have with Precision Instrument Manufacturing Company?

A. He was their supplier for aluminum castings.

Q. Has he always been your supplier of those castings?

A. He has.

Q. Has anyone else besides Mr. Schultz supplied any of those castings?

A. Not to my knowledge.

Q. Did you talk to Mr. Alberts before you testified?

A. The day before the testimony, I think, was begun.

Q. You mean the day before the beginning of the taking of any of the testimony?

A. That is right.

Q. And where was that?

221 A. In Mr. Alberts' office.

Q. And who was present at that time?

Mr. Larson, Mr. Alberts and I.

Q. At that time did you tell Mr. Alberts and Mr. Larson the testimony that you would give in the Interference?

A. I do not believe I told Mr. Alberts anything at that time. I think he was talking to Mr. Larson all the time.

Q. Did you ever talk to Mr. Alberts before you testified, as to the testimony that you were going to give in the Interference?

A. I think one morning for about 15 minutes.

Q. And when was that?

A. I can't recall. It was before the testimony was taken.

Q. The day before, or two or three?

A. I think it was the same morning, perhaps.

Q. That you testified?

A. Yes, the same morning before the taking of the testimony started.

Q. Was there any time that you and Mr. Larson talked to all of his witnesses together as a group?

A. No.

Q. Was there any time that you discussed the testimony that you were to give on the case in which you were to testify, the Interference case, at the home of Mr. Alberts?

A. No.

222 Q. Did you at any time discuss the testimony that you were going to give in the Interference, with any representative of Mr. Alberts?

A. No, sir.

Q. Did you at any time prepare any written memorandum that you handed to Mr. Alberts, as to the testimony that you would give?

A. No.

Q. Then, as I understand it, all of the contact that you had with Mr. Alberts was that 15 minutes the morning before the testimony started?

A. That is right.

Q. And how was Mr. Alberts informed as to the testimony that you were going to give?

A. I don't know.

Q. After Mr. Ford testified in Interference No. 77,565, did you talk to him about the testimony that he had given?

A. I talked with him, but I don't think it was about the testimony.

Q. When did you talk with him?

A. Shortly after he was through with his testimony.

Q. Have you talked to him since that time?

A. I saw him on several occasions, yes.

Q. What was the occasion of those talks?

A. He helped install an oil burner in our plant, 223 about eight months ago, and once before then he came out for a little visit, and I talked with him for about five minutes.

Q. Was Mr. Ford paid for that job?

A. For the oil burner? We bought the oil burner through Mr. Ford.

Q. What business is Mr. Ford in, now?

A. He is a fireman for the City of Evanston.

Q. When was the last time that you talked to Mr. Ford?

A. I would say it was seven or eight months ago, when he installed the oil burner, or perhaps once after that he stopped in, I think.

Q. You purchased that oil burner from Mr. Ford, I believe you said?

A. Through Mr. Ford.

Q. Did Mr. Ford receive any remuneration for that?

A. That I don't know. The check was made payable to the oil burner company.

Q. Did you talk with Mr. Schultz after he testified?

A. No.

Q. When was the last time that you talked to Mr. Schultz?

A. About a week ago.

Q. Did you talk to him at that time about the testimony that he had given in the Interference?

A. You mean the last week?

Q. Yes.

A. No.

224 Q. Did you ever talk to Mr. Schultz after he testified, about the testimony that he had given in the Interference?

A. No.

Q. Does Mr. Schultz own any stock in your company?

A. No.

Q. Does he have any interest in your company—

A. No.

Q. —other than being the supplier of castings?

A. No.

Q. Does Mr. Ford own any stock in your company?

A. No.

Q. Does he have any interest in your company otherwise?

A. Only a friendly interest is all. He is a good friend of Larson's.

Q. Who was present during the 15-minute time that you discussed the testimony, that you had given in the Interference, with Mr. Alberts?

A. Mr. Larson, Mr. Alberts and I.

Q. Was that Interference No. 77,565 the first experience that you had ever had in an interference?

A. That is right.

Q. Do you know whether Mr. Larson had ever had any experience?

A. I don't believe he had.

Q. Were you advised by anyone as to what was
225 necessary to be done in the Interference?

A. No.

Q. Did Mr. Larson tell you what kind of proceeding it was and what need be done?

A. It was discussed from time to time, but I would not be able to say just what was discussed.

Q. Did Mr. Larson know that you were going to give the testimony that you gave in the Interference?

A. Yes.

Q. And did he know that that testimony was false at the time you gave it?

A. Yes.

Q. Before you testified in Interference No. 77,565, did you discuss the testimony that you were going to give, with anyone connected with the Snap-On Tools Corporation?

A. No.

Q. Did you assist Mr. Larson in any way in getting witnesses to testify in the Interference?

A. I drove along with him several times, when he went to see some of the witnesses?

Q. And who were those witnesses?

A. Mr. Ford, for one, and several times we went to see Mr. Whitaker, and he wasn't home, and I believe I was with him when he went up to see Mr. Ladendorf.

Q. Did you go with him when he went to see Mr. Schultz?

226 A. No.

Q. Were you present when Mr. Larson discussed the matter with Mr. Ford?

A. No.

Q. Where did that discussion take place?

A. At the firehouse out in Evanston. That is the only place I ever went with him—I don't know where Ford's home is.

Q. And did you stay out in the car?

A. Yes.

Q. Did Mr. Larson tell you what Mr. Ford had said?

A. I don't recall that.

Q. Did he tell you what Mr. Ford would testify to?

A. No.

Q. Did he go with Mr. Larson to see anyone about testifying, who did not testify in the Interference?

A. Yes. George Thomasma.

Q. And anyone else?

A. No.

Q. Do you know Mr. Dawson, Ed Dawson?

A. No.

Q. What was Mr. Thomasma's, that is George B. Thomasma's connection with Precision Instrument Manufacturing Company?

A. He was the vice-president.

Q. Was he one of the incorporators?

A. He was.

227 Q. Who were the other incorporators?

A. Mr. Larson and myself.

Q. What did Mr. Thomasma contribute to the company?

A. Half of what Mr. Larson was supposed to be contributing. They both contributed a like amount.

Mr. Lindsey: What was that answer?

(Answer read by the Notary.)

Mr. Fidler: Q. And did both Mr. Larson and Mr. Thomasma receive stock?

A. Yes.

Q. Did they buy that stock?

A. They got that stock for their invention and for the machinery and equipment they had.

Q. Do you recollect how many shares of stock they received?

A. 300 shares each.

Q. How many shares of stock did you receive in the company?

A. I received 40 shares of stock apiece from them and I bought 30 shares. I bought 30. I received 40 from Thomasma and 40 from Larson, and then I bought 30 shares.

Q. How many shares of stock do you own at this time?

A. 110.

Q. That is the same number that you owned all along?

A. Yes.

Q. Did Mr. Thomasma do any work with you in trying to get together funds—

A. No.

228 Q. —for the company?

A. No.

Q. At the time that Precision was incorporated, did you know where Mr. Thomasma worked?

A. Yes.

Q. And where was that?

A. At the AMMCO in North Chicago, the Automotive supply company.

Q. Is that Automotive Maintenance Machinery Company?

A. Yes.

Q. At North Chicago, Illinois?

A. That is right.

Q. The plaintiff in this case?

A. Yes, sir.

Q. When did you first know that Mr. Thomasma was an employee of Automotive?

A. From the first time I met him.

Q. You say you tried to get Mr. Thomasma to testify?

A. No, we didn't. We tried to keep him from testifying.

Q. You did not want him to testify in the Interference?

A. No.

Q. Why not?

A. Because of our agreement with Snap-On, no one from the AMMCO company was supposed to be connected with ours.

Q. And what did that have to do with keeping Mr. Thomasma from testifying in the Interference any more than any of the the other witnesses?

A. The Snap-On Tools company would find it out and cancel our contract.

Mr. Lindsey: What was that answer?

(Answer read by the Notary:)

Mr. Fidler: Q. Was there an agreement to that effect?

A. Yes.

Q. A written agreement?

A. I believe there was, although I never saw it.

Q. Do you know who of the Snap-On Tools Corporation entered into that agreement?

The Witness: What was that?

(Pending question read by the Notary.)

A. No, I don't. I believe it was Mr. Johnson, but I am not sure of that, though.

Mr. Fidler: Q. That is Mr. Joseph Johnson?

A. Yes, sir.

Q. Did you at the time of incorporation of Precision Instrument Manufacturing Company know that Automotive had some relations with Snap-On Tools Corporation?

A. Yes.

Q. What is your recollection as to what those relations were?

A. They supplied their torque wrench supplies.

Q. That is, Automotive supplied—

230 A. Snap-On.

Q. —its torque wrenches to Snap-On Tools Corporation?

A. That is right.

Q. And what was the purpose of forming Precision Instrument Manufacturing Company?

A. The manufacture of torque wrenches.

Q. Did you know in forming that company that Pre-

cision-Instrument Manufacturing Company was going to take the Snap-On Tools Corporation torque wrench business from Automotive Maintenance Machinery Co.?

A. I did.

Q. Who represented Precision Instrument Manufacturing Company in connection with that agreement?

A. Mr. Larson.

Q. I am referring to the agreement wherein Mr. Thomasma from Automotive was to be kept out of the picture.

The Witness: I do not quite understand that question.

Mr. Fidler: Q. I believe that you said that you did not want and that you tried to keep Mr. Thomasma from testifying because you did not want Snap-On Tools Corporation to know about it.

A. That is right.

Q. Because they would cancel the contract, if they knew that you had one of Automotive's employees in the company?

A. That is right.

231 Q. Who represented Precision Instrument Manufacturing Company in entering such an agreement with Snap-On Tools Corporation?

A. Mr. Larson.

Q. And who represented Snap-On Tools Corporation?

A. I believe it was Mr. Johnson.

Q. When was that agreement entered into?

A. The date of it, I don't know.

Q. Was it after the incorporation of Precision?

A. That I don't remember; I wouldn't be able to tell.

Q. Was it after that letter came in from Snap-On Tools Corporation, about the order for the 500 wrenches?

A. I don't know. The first time I knew of the existence of it was after the Precision was about three or four months old.

Q. How did the question arise?

A. I do not remember.

Q. Was there some discussion about Mr. Thomasma's connection with the company at that time?

A. Yes, there was. Mr. Thomasma insisted on coming to work at Precision, and Mr. Larson didn't think it was the thing to do in view of the contract, and that is when I first said, "How about the contract?"

Q. Was that matter taken up in a director's meeting?

A. Yes— No. It wasn't taken up at a directors' meeting. It was just a formal discussion—or, an informal discussion, rather.

Q. Was it taken up in a stockholders' meeting?

A. No.

Q. Who was present at that discussion?

A. Just Mr. Thomasma and Mr. Larson and myself.

Q. Did Mr. Thomasma ever work for Precision Instrument Manufacturing Company?

A. He used to come in evenings and do a little work, but never in the daytime.

Q. And that is while he was still working for Automotive?

A. No; no. He was then working for the Hack Machinery Company.

Q. Mr. Thomasma never did any work for Precision, then, while he was still employed by Automotive Maintenance Machinery Company?

A. He helped us build some benches there, when we first started out, and stuff like that.

Q. Were there any other agreements entered into about the time that Precision was incorporated, between Precision and Snap-On Tools Corporation?

A. Not that I know of.

Q. Was there any other reason why you did not want Mr. Thomasma to testify in the Interference?

233 A. No.

Q. Was there any reason to the effect that his testimony might be contrary to what you and Mr. Larson had given?

A. No.

Q. In other words, you thought he would testify to the same facts that you and Mr. Larson had testified to?

A. I believe he would have.

Q. Had he agreed to do so?

A. No.

Q. Well, what makes you think that he would have done so?

A. Well, he owned a goodly share of the Company and no doubt, he would try to protect it as well as he should.

Q. Well, do you know why Mr. Schultz testified, as he did, in the Interference?

A. No, I don't.

Q. Did the fact that he was making all the castings for you have anything to do with it?

A. I don't know. I never contacted Mr. Schultz, only a half dozen times up until that time.

Q. Do you have any idea or a rough guess as to how much money has been paid to Mr. Schultz, for castings?

A. No, I wouldn't have the slightest idea.

Q. It amounts to several thousand dollars, does it not?

A. Oh, I would think it would amount to something around there, yes.

Q. Did not Mr. Thomasma refuse to testify in the 234 Interference?

A. Never at any discussions that I ever heard.

Q. Who was present at the discussions that you did have with Mr. Thomasma—

A. Mr. Larson.

Q. Did any of those discussions involve the possibility of Mr. Thomasma testifying in the Interference?

A. Yes.

Q. And what was said?

A. Nothing, only that we thought that he should stay away rather than to testify, and stay out of the picture completely.

Q. Did you know what Mr. Ford and Mr. Schultz and the other witnesses, who testified on behalf of Mr. Larson, were going to testify to, before they took the witness stand?

A. No.

Q. Do you know whether or not anyone connected with Snap-On Tools Corporation had anything to do with the preparation of the Preliminary Statement in Interference No. 77,565?

A. No, I don't.

Mr. Freeman: Will you read that last question?

(Last question and answer read by the Notary.)

Mr. Ooms: Will you read the previous question also?

(Record read by the Notary.)

235 Mr. Fidler: Q. Did you tell Mr. Larson anything as to which he should testify?

A. No.

Q. Did anyone tell you what you should testify to?

A. Only in the discussion between Mr. Larson and myself.

Q. Do you know whether Mr. Larson ever made any

written memoranda as to the testimony that he was to give in the Interference?

A. No, I don't.

Q. Whose idea was it to incorporate Precision Instrument Manufacturing Company?

A. Mine.

Q. Did you use the agreement of September 28th, 1938, which is attached as Exhibit 5 to the Petition filed herein by Snap-On Tools Corporation, in an attempt to sell stock in the company?

A. No. No.

I don't have to see it, because I never used any agreement.

The Notary: What is that?

The Witness: I say, I don't have to see it, because I never used any agreement. The only thing I used was that letter that you referred to in the first part of this testimony.

Mr. Fidler: Q. Do you recollect why you did not use that agreement?

A. I never saw it.

236 Q. But you knew of it when you were selling the stock, did you not?

A. I did not.

Q. What part of the machinery and tools did Mr. Thomasma contribute to Precision?

A. Well, as I understood it, Mr. Larson and Mr. Thomasma owned jointly some hand tools and some castings and some steel and a couple of drill presses and lathes and some fixtures and jigs and a band-saw, and stuff like that.

Q. And do you know what value was placed on those materials?

A. I don't know offhand, no.

Q. Was it sufficient to cover the value of the stock?

A. Yes; together with their invention and machinery, we felt it was sufficient to cover the value of the stock.

Q. Well, at the time that Precision was incorporated, Mr. Larson had filed his application which was involved in the Interference, had he not?

A. I don't know.

Q. Well, you don't know that such an Application was filed?

A. Yes; I do.

Q. Who owned that Application?

A. Mr. Larson.

Q. Did you know that that Application had been assigned to Snap-On Tools Corporation?

237 A. Not until after the corporation had been formed.

Q. How long after that?

A. Six weeks or so.

Q. That is, the patent application which constituted a part of the assets of Precision—

A. That is right.

Q. —had been assigned to Snap-On Tools Corporation?

A. That is right.

Q. Did you sell any stock after that time?

A. No.

Q. Do you know what Snap-On Tools Corporation gave for the Larson Application?

A. Gave for the Larson Application?

Q. Yes.

A. Merely the right and promise to take the tools it manufactured, tools manufactured by Precision Instrument.

Q. You mean that is the consideration that Snap-On Tools Corporation gave for that Application?

A. That is right. The Application was merely collateral or put up there to assure the Snap-On Tools that Precision would live up to their contract.

Q. And if they did not live up to the contract, then what?

A. I imagine they could have taken over the Application.

Q. Well, at that time they had already had the Application assigned to them, had they not?

A. I am not sure, but I think they had.

238 Q. Did some attorney handle the incorporation of Precision for you?

A. Yes.

Q. And who was that?

A. Bert Sinstock. I don't know how he spells it.

Q. Where was he located?

A. In Des Plaines.

Q. Was he a Justice of the Peace?

A. Yes.

Q. When did you start manufacture of wrenches by Precision Instrument Manufacturing Company?

A. I believe it was in January, 1939.

Q. And what equipment did you acquire for that manufacture?

A. Oh, drill presses and lathes and grinder.

Q. And when was that secured?

A. During the latter part of December and the first part of January, somewhere along after we started there.

Q. From whom was that equipment acquired?

A. Any second-hand place we happened to run in to, where they had a decent machine we could buy reasonably. There were about twelve, I believe we bought about 12 different pieces of equipment and bought them all from different places.

Q. What were the names of any of those concerns that you can remember?

A. I don't believe I could recall any of them now.

239 Q. Who handled the purchase of that equipment?

A. Mr. Larson.

Q. Did anyone help him?

A. I was along with him all the time.

Q. How much did that equipment cost?

A. About \$2800.00.

Q. Where did the money come from for that equipment?

A. The money collected from the stockholders.

Q. Did Snap-On Tools Corporation advance any money in respect to any orders that you received from them?

A. No.

Q. How much money did you secure from the stockholders?

A. \$3200.00.

Q. And that represented the sale of how many shares of stock?

A. 320 shares.

Q. That left you \$400.00 to purchase materials?

A. That is right.

Q. How many wrenches were covered by the first order that you received from the Snap-On Tools Corporation?

A. 500.

Q. And what did the material for those wrenches cost?

A. I wouldn't have the slightest idea, now.

Q. Would it cost \$400.00?

A. Yes.

240 Q. Where did the money come from for that?

A. Out of my pocket.

Q. How much money did you advance?

A. About \$800.00. It wasn't in cash. It was on my own credit. The money wasn't advanced in cash. That was on my credit.

Q. Did Snap-On Tools Corporation buy any stock in Precision Instrument Manufacturing Company?

A. No, no.

Q. Did they ever buy any stock in Precision Instrument Manufacturing Company?

A. No.

Q. Did they ever acquire any interest in Precision Instrument Manufacturing Company?

A. No.

Q. Were you acquainted with anyone at Snap-On Tools Corporation, at the time of the incorporation of Precision?

A. No.

Q. Was Mr. Larson acquainted with anyone at Snap-On Tools Corporation at that time?

A. Yes.

Q. Who was that?

A. I don't know.

Q. Did you have any relative working for Snap-On Tools Corporation?

A. No.

241 Q. Did Mr. Larson have any relative working for Snap-On Tools Corporation?

A. I don't know.

Q. Now referring to the letter that was received from Snap-On Tools Corporation respecting the order of 500 wrenches and which you showed to the stockholders, was that letter discussed with Mr. Thomasma?

A. I don't believe there was ever any discussion about it. However, he had seen it.

Q. Was it ever discussed with Mr. Alberts?

A. Not to my knowledge.

Q. Did Mr. Ford receive any remuneration of any kind for testifying falsely in the Interference?

A. No.

Q. Did you receive anything?

A. No.

Q. Did Mr. Schultz receive any remuneration—

A. No.

Q. —for so testifying?

A. No.

Q. Did anyone ever accuse you of testifying falsely in the Interference?

A. No.

Q. Did anyone ever threaten you with prosecution for testifying falsely in the Interference?

A. Yes.

242 Q. Who was that?

A. Through Mr. Hobbs, you and Mr. Lindsey and Mr. Wacker.

Q. Well, did Mr. Hobbs threaten you?

A. Mr. Hobbs said that you people were threatening us.

Q. Well, did anyone to you personally ever threaten you with prosecution for testifying falsely in the Interference?

A. Did anyone talk—to me personally?

Q. Yes.

A. No.

Q. Did you ever talk to Mr. Wacker at any time about it?

A. No.

Q. Did you ever talk to Mr. Lindsey at any time about it?

A. No.

Q. Did you ever talk to me at any time about it?

A. No.

Q. Now will you please state as fully and as exactly as you can what Mr. Hobbs told you in that respect?

A. Well, he told me that you and Mr. Lindsey and Mr. Wacker would unleash the dogs on us if we didn't sign that agreement. It was the agreement that he had up there.

Q. What else did he say?

A. Nothing, only that we were in a bad spot and it would be just as well if we signed the thing, because if we signed it we would have a bonfire.

Q. Anything else he said?

A. That is about as much as I can remember.

243 Q. There was a lot said, but I can't remember all of it. Now, just what was it that Mr. Hobbs said that Mr. Wacker said?

A. Nothing. He mentioned all three of you at the time.

He didn't mention any one individually. He said that both you and Mr. Lindsey, and Mr. Wacker were pretty mad about the whole affair.

Q. Did Mr. Hobbs say that he had talked to anyone about it?

A. He had talked to you three, I guess, or one of you, I don't know which it was. He did not mention who he talked to about it, no.

Q. Did he say that he had talked to Mr. Wacker about it?

A. No. He didn't.

Q. Did Mr. Hobbs say that he had talked to Mr. Lindsey about it?

A. He did not.

Q. Did Mr. Hobbs say that he had talked to me about it?

A. Yes, sir.

Q. And what did Mr. Hobbs say that he had talked to me about?

A. Just what I just told you.

Q. What was that?

A. That you were pretty mad and that you and Mr. Lindsey and Mr. Wacker were ready to unleash the dogs on us.

Q. For what?

A. Well, if we didn't sign that agreement that you 244 had had prepared.

Q. And is that all that Mr. Hobbs said?

A. He said other things, but I just can't remember what they were. He tried to get us to sign the agreement, to avoid a lot of trouble.

Q. Now, when was it that Mr. Hobbs told you that?

A. It was the day that Mr. Hobbs called us in for the first agreement, if you remember what day that was. I don't remember what day that was. That was the agreement that we wouldn't sign.

Q. Well, when did you first talk to Mr. Hobbs about the testimony that you had given in the Interference?

A. It was right after we left Mr. Alberts' office, the day that Mr. Johnson and Mr. Alberts were up at your office.

Q. Now, at the time you are referring to is the same day of a conference in my office between Mr. Alberts, Mr.

Joseph Johnson of Snap-On Tools Corporation, Mr. Wacker and myself and Mr. Allen?

A. I don't know who was there. The only thing I know of was that Mr. Alberts and Mr. Johnson were there. I don't know who else was there.

Q. Well, was that the day that Mr. Thomasma was present and told a story to Mr. Alberts and Mr. Johnson?

A. It was the day that Mr. Alberts and Mr. Johnson called us into the office and they had just come back and found out what it was all about.

Q. Well, who called you into Mr. Alberts' office?

A. I believe it was Mr. Alberts.

Q. And what did he say?

A. He was pretty mad.

Q. What did Mr. Alberts say in calling you into his office?

A. He wanted to see us down at the office.

Q. Was that over the telephone?

A. Yes.

Q. And you went down to his office?

A. That is right.

Q. Now, when you got down to Mr. Alberts' office, who was there?

A. Mr. Johnson and Mr. Alberts.

Q. And who went with you at that time?

A. Mr. Larson.

Q. And when you got there, what was said to you?

A. Nothing was said to me. Mr. Alberts confronted Mr. Larson with the evidence that he had and tried to make him admit that it was so.

Q. What was the evidence that he tried to make him admit?

A. The perjury evidence, the perjured evidence that he had given.

Q. Testimony that he had given in the Interference?

246 A. That is right.

Q. And did Mr. Larson so admit it?

A. He did.

Q. Was anything said to you by Mr. Alberts?

A. No. The conversation was all with Mr. Larson.

Q. Well, did you admit at that time that you had given false testimony in the Interference?

A. I wasn't even asked.

Mr. Lindsey: What is that?

(Answer read by the Notary.)

Mr. Fidler: Q. Now, was there any discussion at that time about the testimony that Mr. Ford had given?

A. No.

Q. Was there any discussion at that time about the testimony that Mr. Schultz had given?

A. No.

Q. Was there any discussion at that time as to the testimony that the other witnesses testifying on behalf of Mr. Larson had given?

A. Not that I remember.

Q. How long did that conference between you and Mr. Larson, Mr. Alberts and Mr. Johnson, in Mr. Alberts' office, take that day?

A. Oh, less than five minutes.

Q. And then what did you do?

247 A. Well, Mr. Alberts was pretty mad and he wanted—he asked Mr. Larson whether the testimony—whether the thing was so or not, whether he had made the drawing or not and then he said, “Now, if it is so, I want to know it, and if it isn't so, I want to know it. If it isn't so, I don't want anymore to do with the case.” And he says, “If it is not so, why, you better start getting yourself a lawyer, because you are going to need him.” And finally Mr. Larson admitted it was so and he requested if he could recommend a lawyer, and he gave us the addresses of three lawyers, and we picked Mr. Hobbs and we went over to see him, right from there.

Q. Was that the first time, as far as you know, that Mr. Larson had admitted that his testimony was false?

A. As far as I know, yes.

Q. What else was said in Mr. Alberts' office that day, during the conference between you, Mr. Larson, Mr. Alberts and Mr. Johnson?

A. The only thing else that I can remember is when Mr. Johnson spoke up and said he was going to find some way to cancel the contract.

Q. What contract was that?

A. It was the contract between Precision and Mr. Larson and the Snap-On.

Q. Is that all that was said?

A. That is all there was time to say; and Ken
348 dashed out of the office and I followed him.

Q. Then where did you go?

A. We went over to Mr. Hobbs' office.

Q. How did you happen to go to Mr. Hobbs' office?

A. Mr. Alberts gave us the names of three attorneys and said, "There they are," we could go over and talk to them, and we picked Mr. Hobbs out and when we got downstairs we went over and saw him because he was the closest there.

Q. Did anyone go with you to Mr. Hobbs' office?

A. No. Just Mr. Larson and I.

Q. When you saw Mr. Hobbs that day, what did you tell him?

A. We told him the whole story.

Q. Well, what was the story?

A. Well, I don't remember—We just told him that we had given perjured testimony in the deposition, that we were in a bad spot and we came over to see him. He asked a lot of questions of Mr. Larson, I don't remember what they were, and he said, "Well, the only thing I can do is get in touch with Mr. Lindsey," or Mr. Fidler I believe he said.

Q. Is that all that Mr. Hobbs said?

A. Well, that was a very short conference, at that time, that first one.

Q. Was there anything else that you or Mr. Larson said?

A. I don't remember.

249 Q. What did Mr. Hobbs say he was going to see Mr. Fidler about?

A. He didn't say.

Q. Well, did you have any idea of what he was going to see Mr. Fidler about?

A. I don't know. I presume that it was about the testimony that we had given, to see what it was all about.

Q. Well, was there any question of a settlement, that you recollect?

A. Not at that first meeting.

Q. How long did that first meeting with Mr. Hobbs last?

A. Not over ten minutes.

Q. When was the next time that you saw Mr. Hobbs?

A. The day that you sent the contract over, or the following day.

Q. Well, how long after the first conference was that?

A. I imagine it was a week or ten days, somewhere in

there. It might not have been that long even. I don't remember just how long it was.

Q. Well, did you talk to Mr. Hobbs over the telephone, on anything during that interval of time?

A. I never did, no.

Q. Did Mr. Larson?

A. I believe he did.

Q. Did Mr. Larson tell you what they had talked about?

A. No.

250 Q. Do you know whether Mr. Hobbs did get in touch with me?

A. No. However, he must have. He came back with the contract a few days later. He must have come from somewhere.

Q. Well, did Mr. Hobbs ever advise you in any way that he had gotten in touch with me?

A. Not me, but he advised Mr. Larson.

Q. What did he advise Mr. Larson in that respect?

A. That he had gotten in touch with you and that a settlement was pending of some sort.

Q. Well, do you recollect whether Mr. Larson was told by Mr. Hobbs what was done when he got in touch with me?

A. No. I don't.

Q. Did Mr. Larson tell you what Mr. Hobbs had said about getting in touch with me?

A. No.

Q. Did Mr. Larson tell you that Mr. Hobbs had told him where he had gotten in touch with me?

A. No.

Q. Can you place the time that Mr. Hobbs got in touch with you, with that first agreement, any better? How many days after your first conference with Mr. Hobbs?

A. I wouldn't have the slightest idea. The closest I could place it would be within a week or ten days and that might not even be correct.

251 Q. Where did Mr. Hobbs get in touch with you?

A. He didn't get in touch with me. He got in touch with Mr. Larson at Precision.

Q. Did you see him when he was out there?

A. Oh no. He called up at Precision and then we came in.

Q. And what did Mr. Hobbs have to say when you came in, at that time?

A. He showed us that contract and told us at that time we either had to sign that thing or else.

Q. And was it a fully prepared contract?

A. Yes, sir.

Q. And what did that contract provide?

A. I don't know. I did not read it very well, but I know it wasn't a very equitable contract.

Q. Well, did you read it?

A. Part of it.

Q. Why didn't you read all of it?

A. Well, because after I read the first part, I didn't want no more of it.

Q. What was the first part of it, that you remember?

A. I don't exactly recall, but it was sure putting us in the dog house, putting us out of business entirely.

Q. Well, don't you recollect anything that it provided?

A. No, not exactly. I don't remember legal terms very well.

Q. What did Mr. Hobbs say when you went in to see him, at that time?

252 A. Well, he advised us that we should sign the contract, and we refused to sign it, and he said, "Well, the only thing I can do is take it back and tell them about it and see if we can get a more equitable contract."

Q. Is that all Mr. Hobbs said at that time?

A. That is all he could say, when we wouldn't sign the contract and after he advising us to sign it.

Q. Was that all that Mr. Hobbs had to say at that time?

A. That is the only thing I can remember, at present.

Q. Well, did Mr. Hobbs take that contract back and get another one?

A. Well, he got in touch with us a short time later, with another contract.

Q. And where did he get in touch with you at that time?

A. At his office.

Q. Who was present at that time?

A. Mr. Hobbs and Mr. Larson and I.

Q. And did he have a new contract, at that time?

A. Yes.

Q. How long was that after you had seen the first contract?

A. It seems to me like it was a very short period. I

couldn't say how long, but it doesn't seem to me now that there was very much time elapsed between the two contracts.

Q. What was the difference between that contract 253 and the one that you had seen first?

A. Well, the first contract put us out of business entirely, and the second contract allowed us to go out and manufacture the wrenches we had on order.

Q. And what did you think about that contract?

A. Well, that was a little fairer. We had no choice in that matter at all. There were a few phrases in that, that we had changed, and then we signed the contract the next time we went down to his office.

Q. What do you mean, that you did not have any choice?

A. Well, we either had to sign the contract or go to jail?

Q. Who told you that?

A. Mr. Hobbs told us that you told him that.

Q. Now, just what did Mr. Hobbs say to you?

A. I wouldn't know in that many words, but that is what he—that is the impression he left on me, that you said either sign the contract or go to jail.

Q. Well, can you state Mr. Hobbs' words any more exactly than that?

A. I couldn't state them to you exactly, but I know that is just about the sum and substance of the whole thing, he insisted that we sign it and we told him that we didn't like it and he said, "Well, I am afraid you have got no choice." I remember that part.

Q. There is nothing else that you remember, that he said?

254 A. Nothing that I can remember too clearly, no.

Q. And whose names did he mention, then?

A. He mentioned yours and Mr. Lindsey and Mr. Wacker.

Q. What did he say that Mr. Wacker had said?

A. Nothing. He didn't— He definitely said that you people were mad and that you would unleash the dogs if we didn't sign.

Q. Those are the words that Mr. Hobbs used?

A. Yes, sir.

Q. Well, did he explain to you what those words meant?

A. No. They didn't need any explanation at all.

Q. Why didn't they need any explanation?

A. I am sufficiently intelligent to know when I am doing something wrong, and if someone gets something on me, that that is what they meant by it.

Q. And how long did that conference last?

A. Just long enough to sign and get out.

Q. How long was that?

A. Oh, an hour. That was the time that he told us that if we signed that contract, that you would have a big bonfire.

Q. Just what were Mr. Hobbs' words in that respect?

A. I don't know what the exact words were, but those are just about the words he said, that you would have a big bonfire if we signed that contract.

255 Q. Who do you mean by "you", in your last answer?

A. I mean Mr. Fidler and that is, probably who he meant when he said they would have a big bonfire.

Q. Is that who you understood?

A. That is who I understood it was. Those were the ones that were gunning for us.

Q. You discussed that with Mr. Larsen?

A. Yes.

Q. And do you know who he understood it to mean?

A. Yes, sir.

Q. Who did he understand it to mean?

A. Mr. Wacker and you and Mr. Lindsey.

Q. A big bonfire of what?

A. Of the evidence.

Q. What evidence?

A. The evidence presented when the transcription was taken.

Q. Who had that evidence?

A. You had.

Q. Only me?

A. I don't know who else had it.

Q. When you testified in the Interference, you were shown certain wrench parts as physical exhibits in the Interference, were you not?

A. I was.

Q. Whose were those, do you know?

A. The exhibits?

Q. Yes.

A. They were ours.

Q. Well, who had possession of those exhibits?

256 A. Mr. Alberts.

Q. And there were some records, paper records also, in the Interference; whose were those?

A. That I do not know. I never saw them, as I remember.

Q. Did you ever see a drawing that was offered in evidence?

A. Oh yes.

Q. A drawing that was signed by Mr. Ford and Mr. Dawson and Mr. Larson?

A. Yes, I did.

Q. A drawing which Mr. Larson testified was made by a high school boy, whereas, it was made by Mr. Thomasma?

A. Yes.

Q. Who had possession of that drawing?

A. I believe Mr. Alberts did.

Q. You still understood that the persons that were going to have the bonfire, as you put it, were Mr. Lindsey, Mr. Wacker and myself?

A. Yes, sir.

Q. And what was to be included in that bonfire?

A. It was never said what was to be included, but we took it for granted that it was to be the evidence in the case.

Q. You took that for granted?

A. Yes.

Q. Mr. Hobbs didn't tell you that, did he?

257 A. Yes.

Q. He told you that?

A. Well, he told us that all the evidence would be burned, we would have a big bonfire.

Q. Did Mr. Hobbs tell you that?

A. Yes.

Q. Upon the day that you signed the agreement?

A. Yes.

Q. Did Mr. Hobbs say what that evidence was?

A. No; not distinctly what it was, no.

Q. Did he name the persons that were going to participate in that—

A. No.

Q. After you signed that agreement, where did you go?

A. Home.

Q. And when did you next see Mr. Hobbs?

A. I never saw him since then.

Q. Was this contract matter, including the signing of the contracts, explained to the stockholders of the Company?

A. Yes.

Q. When was that, now?

A. That is, explained to some of the stockholders of the Company, yes.

Q. When was that done?

A. At the time we purchased the stock back.

Q. When was that?

A. I don't know exactly. About a month or so after that.

258 Q. Now, through all of these dealings with respect to the settlement of the Interference, I understand that all of the negotiations and discussions you had with Mr. Hobbs, and Mr. Alberts was not in the picture, is that correct?

A. Yes, that is right.

Q. So all that was said and done in that connection was between you and Mr. Larson and Mr. Hobbs?

A. Yes, to the best of my knowledge, yes.

Q. Now, what stockholders were present at the time that you explained the contracts to the stockholders?

A. We didn't have a stockholders' meeting. We explained it to them individually.

Q. Now, you referred to buying back stock. Who bought back the stock?

A. Precision Instrument company.

Q. Where is that stock now?

A. In the treasury.

Q. And who advanced the money for the purchase of that stock?

A. We had the money.

Q. You mean that the money for the purchase of that stock came out of the treasury of Precision Instrument Company?

A. That is right.

Q. Who handled the buying back of the stock?

A. I did.

259 Q. Who are the stockholders of Precision now?

A. Mr. Larson, Mr. Westman, Mr. Sheerer, Mr. Fisher and myself.

Q. What is Mr. Westman's full name?

A. Willard—

Q. Do you know where he lives?

A. 2953 North Damen.

Q. Chicago, Illinois?

A. Yes.

Q. What is Mr. Sheerer's full name?

A. Harold—

Q. Where does he live?

A. In Des Plaines. I would not know the address.

Q. What is Mr. Fisher's full name?

A. Louis—

Q. Where does he live?

A. He is right now with the U. S. Army in Australia.

Q. What business is Mr. Westman in?

A. He is a chauffeur.

Q. For whom?

A. For the Illinois Traveling Men's Association, R. A. Cavanaugh's Traveling Men's Association, R. A. Cavanaugh used to be the Secretary. I don't know who is now.

Q. What business is Mr. Sheerer in?

A. He is a Public Accountant.

Q. Where is his business located?

A. I don't know. He was working for some concern here as a C.P.A.

Q. And what business was Mr. Fisher in?

260 A. He was a bookkeeper and accountant.

Q. With what concern?

A. I do not know.

Q. Besides Mr. Larson and yourself, are any of the original stockholders now stockholders?

A. Yes. Mr. Westman, Mr. Sheerer and Mr. Fisher.

Q. The stock of all of the other stockholders having been purchased and turned back into the treasury?

A. That is right.

Q. Do Mr. Westman, Mr. Fisher and Mr. Sheerer still own the same number of shares that they did originally?

A. Yes.

Q. Did Mr. Alberts inform you of a conference which he had in my office, with me, when he and I were the only persons present?

A. No. Mr. Alberts never did such business with me. He always did most of his business with Mr. Larson.

Q. Well, did you ever know of any such conference between Mr. Alberts and me?

A. No.

Q. Do you recollect that it was decided to concede priority of invention to the party Zimmerman in Interference No. 77,565, so that the patent would issue to Zimmerman?

A. I believe that is what that contract was for, wasn't it, that we signed with you?

261 Q. You remember that that was agreed upon?

A. Yes.

Q. Do you remember who proposed that?

A. No.

Q. Were you ever asked anything about that, by anyone?

A. No.

Q. So you have no knowledge whatever as to who made the decision in that respect?

A. No.

Q. At the time that the agreement was entered into by the Precision and Automotive in the settlement of the Interference, had you read that agreement through?

A. The last agreement?

Q. Yes.

A. Yes.

Q. I show you a copy of an agreement which is attached to the Complaint filed in this case as Exhibit 1, and ask you whether or not that is the agreement which you have testified to as having been signed that last time that you saw Mr. Hobbs?

(Witness Carlsen examines said document.)

A. Yes; I think it is.

Q. You and your company proceeded to operate under that agreement, did you not?

A. We did.

262 Q. And I call your attention to the paragraph numbered 3 which refers to the manufacture of 6,000 wrenches; did you make up those wrenches?

A. All but one.

Q. Did you think that was fair?

A. Well, no, not exactly.

Q. Well, what did you pay for making up those wrenches?

The Witness: What?

Mr. Fidler: Q. What did you pay for making up those wrenches?

A. Well, we lost our Wrench and we were virtually out of business, all-except those 6,000 tools.

Q. Well, at that time, did Mr. Larson have another wrench that he thought he might make?

A. I don't know.

Q. You never discussed anything like that with him?

A. He never discussed anything like that with me, no. I was never interested in anything like that.

Q. Well, at that time did the wrench that you are making at the present time enter into the picture?

A. No.

Q. When did you first learn of the wrench that you are now making?

A. Oh, in about June of 19—or February of 1941, somewhere in there.

263 Q. What were the circumstances under which you learned of that Wrench, then?

A. Larson came down with it and was going to test it out.

Q. Do you know how long it took to prepare the Application for patent for that Wrench?

A. No, I don't.

Q. Did you know that an Application for patent was being prepared for that Wrench?

A. No.

Q. Did you know that an Application for patent for that Wrench was ever filed?

A. No.

Q. Do you know whether a patent ever issued covering or showing that Wrench? I am speaking of the Wrench that you now manufacture.

A. The new Wrench, yes, I just recently saw the patent.

Q. When did you first learn of that?

A. The day that the patent arrived at our office, a copy of the patent.

Q. Who pays the bills for Precision Instrument Manufacturing Company?

A. I do.

Q. Were any bills paid for the preparation of a Patent Application covering the wrench that you are now making?

A. I don't know. I never looked—We have several patents pending now that I pay the bills on. I send 264 Mr. Alberts a check and I never see what they are.

Q. Well, who is handling those Applications?

A. Mr. Alberts.

Q. As attorney for Precision Instrument Manufacturing Company?

A. As attorney for Mr. Larson.

Q. Does Mr. Larson have a separate arrangement with the Company, respecting his inventions?

A. Yes.

Q. Are his inventions part of the assets of Precision Instrument Manufacturing Company?

A. No.

Q. Is there any licensing arrangement as between Precision Instrument Manufacturing Company and Mr. Larson?

A. Yes.

Q. Who prepared those license agreements?

A. Mr. Alberts.

Q. Am I correct in saying that Mr. Alberts ceased to represent Mr. Larson and Precision that day in his office, when he called you and Mr. Larson in about the false testimony?

A. That is right.

Q. For how long did he cease to represent you, that is, Precision and Larson?

265 A. He hasn't represented Precision since then, with the exception of one day I think, when Mr. Hobbs refused to take our case any longer.

Q. And when was that?

A. That was just before the signing of that agreement.

Q. What was the occasion of Mr. Hobbs refusing to represent you, at that time?

A. Well, we were just stubborn and did not want to sign, and Mr. Hobbs said if we didn't sign, he did not want the case any longer, he didn't want to represent us.

Q. And Mr. Alberts became your attorney then?

A. Well, just for that day is all. Mr. Hobbs sent whatever the paper was back to Mr. Alberts and then Mr. Hobbs went on the next day from there again.

Q. What did Mr. Hobbs have to say to you at that time?

A. Nothing much, only he just didn't want the case any longer.

Q. What did Mr. Alberts have to say at that time?

A. I did not see Mr. Alberts at the time.

Q. And that was just for one day, I believe you said?

A. I think that that is what it was. I never saw Mr. Alberts at the time, so I don't know how long a period it

was. It seems to me it was only one day, because I think that happened one time when we were down there, and the next time we were down in Mr. Hobbs' office again.

266 Q. You do not remember exactly the occasion for Mr. Hobbs taking that position?

A. No, I don't.

Q. Did Mr. Alberts cease to represent Mr. Larson that day, when you and Mr. Larson were called into his office respecting the false testimony?

A. Yes. That was the day.

Q. How long did that situation continue?

A. Until after we had signed the agreement and we had settled.

Q. How long after you had signed the agreement?

A. Oh, it must have been probably two weeks or so.

(And thereupon, at 3:55 o'clock P. M., Tuesday, April 13, 1943, a recess was taken until 4:10 o'clock P. M. of the same day.)

Mr. Fidler: Q. Mr. Carlsen, about what time did you finish up at Precision the 6,000 wrenches provided for in the agreement which is Exhibit 1 attached to the Complaint?

A. I believe it was in March, 1941, but I am not sure of that. March, 1941. I am not sure of that though. It may have been a little later, than that. That is just a guess.

Q. That would give you about three months' time 267 in which to complete those 6,000 wrenches?

A. Well, then the date must be wrong, because we couldn't have made that many. In 1942, then. I would have to look that up. I have that record.

Q. After you finished those 6,000 wrenches, did you discontinue the manufacture of torque measuring wrenches?

A. Yes.

Q. Well, you are manufacturing a torque measuring wrench now, are you not?

A. Yes.

Q. Well then, when did you begin to manufacture?

A. About a month after we stopped making up the 6,000.

Q. Then, you did continue on, after making up the 6,000.

A. Oh yes.

Q. —as provided by the contract?

A. Yes.

Q. (Continuing.) With the manufacture of another torque measuring wrench?

A. Of a torque wrench, yes; that is right.

Q. When was the first time that you were advised by Mr. Alberts in respect to the nature of the testimony that was given in Interference No. 77,565?

A. The same day that we met Mr. Alberts, after the conference in your office.

Q. Is that the first time that Mr. Larson was advised?

A. I think so.

268 Q. There wasn't any written communications of any kind prior to that time?

The Witness: You mean on the testimony that we had given?

Mr. Fidler: Yes.

A. No. There weren't. Not that I remember, anyway.

Q. Well, do you recollect having received from Mr. Alberts a letter, about the middle part of November, 1940, in which he advised that he had called somebody and told them the testimony was all wrong, or something like that?

A. Yes, I believe I do. I believe I do. Yes, I do remember that that was at the time we were having some trouble with an attorney, who was a stockholder, and we thought it was him who was doing it.

Q. And what was the name of that attorney?

A. Krichiver.

Q. Do you know his first name?

A. David.

Q. Did you think that Mr. Krichiver had told Mr. Alberts about this?

A. I don't know. He was Mr. Thomasma's attorney.

Q. You do not know the fact in that respect?

A. No, I don't, but we just took it for granted that it was Krichiver, because he was trying his best to make all the trouble he could in the corporation.

Q. You took it for granted that it was Krichiver that did what?

269 A. That wrote this letter or called up Mr. Alberts at the time.

Q. Do you recollect what Mr. Alberts' letter stated?

A. No. Not exactly. I do remember, though, that it was something about a telephone call that he had gotten from someone that said that the testimony we were giving in the case wasn't the truth.

Q. Was that before the day that Mr. Alberts called you and Mr. Larson into his office?

A. Yes.

Q. How long before?

A. I couldn't say exactly.

Q. A week?

A. I think it was more than that.

Q. Did you then talk to Mr. Alberts about that?

A. Mr. Larson did. I didn't.

Q. How soon after receiving the letter did Mr. Larson talk to Mr. Alberts about that?

A. That I don't know.

Q. Well, was it the same day that he talked to you about it?

A. I don't think so.

Q. The next day?

A. That I don't remember. I don't remember just when it was.

Q. Did Mr. Larson talk to you about it the same day—

A. The day that the letter came in.

Q. —that the letter was received?

A. Yes, I believe he did.

270 Q. Who opens the mail at Precision Instrument?

A. I do.

Q. Did you read the letter before you handed it to Mr. Larson?

A. I read it and laid it on the desk, and Larson read it when he came in.

Q. What did you say to Mr. Larson about that?

A. We didn't discuss it at all.

Q. Why not?

A. Well, we didn't think we would have any—it wasn't important enough to discuss. We felt like it was Krichiver, and as far as anything that Krichiver had done we didn't discuss very much up there, because we did not pay much attention to it.

Q. How long did the letter lie there on the desk before you took any action?

A. I did not take any action.

Q. Well, before Mr. Larson took any action?

A. I don't know when he took any action on it.

Q. Well, how long did the letter lie on the desk?

A. Just one day.

Q. Then what happened to it?

A. It was put in the files.

Q. Do you have that letter available, now?

A. I do not know.

271 Mr. Ooms: Unless the letter is in the files.

The Witness: Here is a file that I had. Do you want to look through it and see whether you find it in there?

Mr. Fidler: I would rather that you look and see whether or not you find any letter of that character.

A. No. It is not in this.

Q. Do you know what became of the original of that letter?

A. No. I don't.

Mr. Freeman: Do you want a copy of it, Mr. Fidler? I have a copy here in Mr. Alberts' file. We will be glad to give you a copy of it.

Mr. Fidler: If you please.

Mr. Freeman: And I want the record to show that it is being handed to you by counsel for Snap-On.

Mr. Lindsey: We also want to see the original of that.

Mr. Ooms: Maybe you can tell us—

Mr. Freeman: You go and get the original. We are just for convenience giving you a copy.

Mr. Lindsey: We want to see the original. As I understand, it is in the possession of Precision. We never had it.

Mr. Freeman: I didn't say this came from Precision. I said this was taken from the file of Mr. Alberts, which is a copy of a letter that he wrote to Precision about it.

Mr. Lindsey: My only point is that we want to see the original too.

The Witness: Well, Mr. Lindsey, everything is here
272 that I have in the file up there. If the letter isn't here, it just isn't in existence anymore.

Mr. Freedman: I have no idea where the original letter is.

The Witness: It is probably in the waste-basket with some of the other stuff.

Mr. Fidler: Q. I hand you a copy of a letter dated November 11, 1940, which Mr. Freeman has just handed to me from Mr. Alberts' file—

Mr. Freeman: That should have been "from the Snap-On files."

Mr. Fidler: Q. (Continuing.) —from the Snap-On file, and ask you whether or not you received the original of

that letter?" (Mr. Fidler hands said document to the witness.)

(Witness Carlsen examines said document.)

A. Yes. That is the one.

Q. And that is the letter you have been testifying about, as having been received around the middle of November?

A. Yes, sir.

Q. (Continuing.) From Mr. Alberts, in respect to the testimony given in the Interference?

A. That is right.

Q. Now, do you know whether or not Mr. Larson, after receiving this letter, got in touch with Mr. Alberts about it?

A. No, I don't.

273 Q. Did he ever say anything about any conversations he had with anybody about it?

A. No.

Q. Do you know whether or not Mr. Larson discussed this letter of November 11th with anyone at Snap-On?

A. No, I don't.

Q. Do you recollect whether or not the original of this letter of November 11th, 1940, was discussed with anyone, by you and Mr. Larson?

A. No.

Q. Do you have any recollection of having gotten in touch with Mr. Thomasma, after receiving this letter?

A. No.

Q. Have you any recollection of having shown this letter to Mr. Thomasma?

A. No.

Q. Do you know whether or not Mr. Thomasma, about the time that this letter was received, had knowledge of its receipt?

A. No; he did not have.

Q. Did not you and Mr. Larson get in touch with Mr. Thomasma and show him this letter, at which time he was working for the Hack Machine Company?

A. No.

Q. At Des Plaines?

A. We did not.

Q. Did not you and Mr. Larson ride in an automobile with Mr. Thomasma, at about the time of the receipt of this letter of November 11, 1940, and show to him such letter?

274

The Witness: How long after the beginning of the testimony did this thing occur—did this letter occur?

Mr. Fidler: This letter is dated November 11, 1940 and, if I recall correctly, the testimony ended about November 4th, 1940, this letter having been written about a week after the completion of the testimony.

A. No. Neither one of us talked to Thomasma from the beginning of the testimony to the end of it or even after the end of it, I don't believe either one of us as much as said "Hello?" to him since the beginning of this testimony.

Q. Did not you or Mr. Larson talk to Mr. Thomasma at some time, about this letter of November 11, 1940?

A. No.

(Discussion off the record.)

Mr. Freeman: Why don't you offer a photostatic copy and have it marked for identification, and we will keep the original.

Mr. Fidler: I wish to have the reporter mark, with the consent of Mr. Freeman, a photostatic copy of this letter of November 11, 1940, for purposes of identification as Plaintiff's Exhibit 2, Automotive Exhibit No. 2.

(Document marked by the Notary as Automotive Exhibit No. 2, for identification.)

275 Mr. Fidler: Q. Has any agreement, other than the agreement dated September 28, 1938, been entered into between Snap-On Tools Corporation and Precision Instrument Manufacturing Company or Mr. Larson, in respect to the manufacture of wrenches by Precision Instrument Manufacturing Company?

A. I hand you a copy of the September 28, 1938 agreement, referred to, which is attached to the Petition filed in this case, as Exhibit 5.

A. I can't be sure, but I think there is an agreement between Precision and Snap-On now. I have a recollection of there being one.

Q. When was that agreement entered into?

A. If there was, I don't know exactly. In fact, I am not sure that the agreement exists, but for some reason or other I have a recollection that one does exist.

Q. Was there not another agreement entered into between Mr. Larson or Precision, or both, and Snap-On, about December, 1940, at the time that the agreements were entered into with Automotive?

A. I don't believe there—

Mr. Freeman: Read that last question, please.

(Question read by the Notary.)

A. Yes, I think there was.

Mr. Fidler: Q. Will you please produce that agreement?

276 (Document handed to the witness by Mr. Freeman, and then handed to Mr. Fidler by the witness.)

Mr. Fidler: Q. By whom was this agreement that you have just handed to me, and which was entered into on December 20, 1940, prepared?

A. I don't know.

Q. I note Mr. Harry C. Alberts' name on the wrapper. Does that refresh your recollection in any way?

A. I still would not know, because I do not believe I was a party to this agreement at all. Yes, I did witness it. (Witness examines said document.)

Mr. Lindsey: The witness looks at the last page.

The Witness: I just witnessed the signatures on here. I did not know what it was all about.

Mr. Fidler: As Secretary and treasurer of the company.

Q. Did you read this agreement before you placed your name on it?

A. No, I didn't.

Mr. Fidler: I would like the reporter to mark, for purposes of identification, a photostatic copy of this agreement, as Automotive Exhibit No. 3.

(Document marked as Automotive Exhibit No. 3, for identification.)

Q. Are there any other agreements of any kind existing, as between Mr. Larson and Snap-On, or Mr. Larson and

Precision, respecting torque measuring wrenches manufactured by Precision?

277 A. (The witness, Mr. Carlsen, hands document to Mr. Fidler.)

These are both alike, aren't they?

Mr. Alberts: No. Here is one.

The Witness: Here is one.

(Mr. Carlsen hands another document to Mr. Fidler.)

Mr. Fidler: Q. You have handed to me a copy of a Concession of Priority in Interference No. 77,565, and an assignment, of the Larson Application involved in that Interference, to Automotive, is that correct?

A. That is correct.

Q. I will now ask you again whether or not there are now existing, as between Precision and Snap-On, any agreement of any kind, respecting torque measuring wrenches, other than the agreement, Automotive Exhibit 3 for identification?

Mr. Freeman: Let the record show that there have been just handed to Mr. Lindsey a photostatic copy of the agreement of January 16, 1941, between Precision and Snap-On, and an agreement entitled Rider to Agreement Executed on January 16, 1941, dated the 26th of March, 1942, between Precision and Snap-On.

The photostatic copies admit the prices at which Precision sells the wrenches or torque wrenches to Snap-On.

Mr. Fidler: Please read the question.

278 (Pending question read by the Notary.)

The Witness: I have just handed you those.

(Mr. Lindsey left the hearing room at this point in the taking of the deposition.)

Mr. Fidler: Q. I show you the two copies, agreements handed to me by Mr. Freeman, and call your attention to the signature page of each of them and ask you whether or not it is a fact that neither agreement has been executed by Precision; is that correct?

A. That is correct. However, the originals are.

Q. Are these two agreements, which I just showed you, the only agreements between Snap-On and Precision, and the agreement, Automotive Exhibit 3 for identification, that now exist between those companies?

A. I believe that is all there is. To the best of my recollection, that is all there is.

Q. Are there any agreements, other than these, now existing, as between Mr. Larson and Snap-On?

A. Not that I know of.

Q. Other than the agreement of September 28, 1938, which I showed you a moment ago, and which is Petitioner's Exhibit 5, and these agreements, have any other agreements been executed or entered into between Snap-On and Precision?

A. Not to my knowledge.

Q. Were any oral agreements or understandings
279 entered into between Precision and Snap-On?

A. No.

Q. Were any oral understandings entered into between Mr. Larson and Snap-On?

A. Not that I know of.

Q. Are there any existing written agreements, as between Mr. Larson and Precision Instrument Manufacturing Company?

A. Not that I know of.

Q. Are there any oral agreements now existing, as between Mr. Larson and Precision Instrument Manufacturing Company?

A. Not that I know of.

Q. To whom does Precision sell its wrenches?

A. Snap-On Tools Corporation.)

Q. To anyone else?

A. No.

Q. How are the orders from Snap-On to Precision handled, that is, do they pass on orders received from customers, or does Snap-On issue orders under its own order blank, on orders received?

A. Snap-On issues its orders under its own order blanks.

Q. Do you know to whom the wrenches that you sell to Snap-On are sold?

A. No.

Q. Do you ever take any orders from any customer other than Snap-On?

280 A. No.

Q. Is the customer's name ever specified in orders than you receive from Snap-On?

A. On some, yes.

Q. Do you recollect the names of any of those customers?

Mr. Ooms: Just a moment. I don't see that that has anything to do with this lawsuit. I object to that, on the ground that it is absolutely impertinent to any issue in this case.

Mr. Fidler: Certain allegations have been made in the pleading respecting the places or customers or kinds of customers to whom these wrenches are sold, and I think that this inquiry is perfectly proper in view of it.

Mr. Ooms: Not the names of those customers. The character of them. What is the question?

(Pending question read by the Notary.)

Mr. Ooms: What was the preceding question?

(Record read by the Notary.)

Mr. Ooms: I instruct the witness not to answer any question about names of customers.

Mr. Fidler: Do you so refuse to answer?

The Witness: Yes.

Mr. Fidler: Q. Do you know the character of the customers to whom Snap-On sells its wrenches?

The Witness: Do you mean the character of the 281 customers, the type of business or—

Mr. Fidler: Yes.

A. The United States Army.

Q. Is that all?

A. Oh, there are some of these—some go to the United States Navy.

Q. Is that all?

A. That is about all, that is about all that are really ear-marked for any one particular spot.

Q. That is all that you know of?

A. Yes.

Q. Do you, or Precision I mean, make one or more than one kind of wrench for Snap-On? I am not talking about sizes. I am talking about construction of wrenches.

A. Construction of wrenches—We make two different types, one a ratchet type, and the other is plain without a ratchet.

Q. Are those the only differences?

A. That is the only difference, yes.

Q. That is, the ratchet is the only difference?

A. That is the only difference.

Q. Why was this contract, Automotive Exhibit No. 3 for identification, entered into?

The Witness: It is there, isn't it?

Mr. Freeman: Here it is. (Mr. Freeman handed document to the witness.)

A. Well, I wouldn't know, when I got through 282 reading this thing, I wouldn't know any more about it than before I even saw it, but I imagine it is because the Snap-On Tools wanted to give the patent back or release the patent so that Larson could assign it over to AMMCO.

Mr. Fidler: Q. Well, did Snap-On Tools Corporation know about the false nature of the testimony given in the Interference, at the time they entered into that agreement, Automotive Exhibit No. 3 for identification?

A. I don't know.

Q. Well, did they know about that before the agreement was entered into with Automotive by Precision?

The Witness: I don't know what you mean?

Mr. Fidler: Q. Did Snap-On know about the false nature of the testimony before that agreement was entered into?

A. I just said I didn't know.

Q. I am talking about the agreement that Precision entered into with Automotive, did Snap-On know, before that agreement was entered into, about the false nature of the testimony?

A. Why, yes, they knew at the time they were up at your office.

Q. Then, they would also know about it at the time they entered into this agreement?

A. I presume they did. I don't know the date of this agreement, but I presume they did.

Q. Did Mr. Joseph Johnson know it personally?

283 A. Mr. Johnson was at your office at the time and must have known it.

Q. And how about being at Mr. Alberts' office, after that conference in my office?

Mr. Freeman: He has already so testified.

A. Yes.

Mr. Fidler: Is that true?

A. Yes, that is true.

Q. Did you see Mr. Ford put his name on the drawing that Mr. Larson testified about in the Interference?

A. No.

Q. Did you see Mr. Dawson put his name on it?

A. No, sir.

Q. Did you see Mr. Larson put his name on it?

A. No.

Q. Do you know when those names were put on that drawing?

A. No.

Q. When you testified in the Interference, had you gained any knowledge from Mr. Thomasma as to dates that Automotive might prove in the Interference?

A. No.

Q. Had you talked to Mr. Thomasma about any of the wrench work at Automotive?

A. No.

Q. Were you ever in Automotive's plant?

A. No.

284 Q. Were you familiar with the pleadings in this case before they were filed?

A. No.

Q. You didn't have anything to do with that?

A. No; no.

Q. Did anyone ask you for your consent to plead the false nature of the testimony given in the Interference?

The Witness: I don't quite understand that.

Mr. Fidler: Q. Well, in connection with this pending case in which you are now testifying, did anyone consult you respecting alleging that false testimony had been given in the Interference, before any papers to that effect were filed in this case?

A. No, I don't think so; not to my recollection.

Mr. Fidler: I think that those are all the questions I have, but we haven't looked over the correspondence that you have produced.

Mr. Freeman: We offered it to you here a few minutes ago. We gave you the whole file.

Mr. Fidler: But, with respect to that letter, I did not want to take the time then. I thought we better do that, because there may not be any questions or anything I would want to ask respecting them, and I thought I would wait until I asked the questions I had in mind, of the witness, and then—

285 Mr. Freeman: Well, here, we have it here and you can have it now.

(Mr. Freeman hands file of papers to Mr. Fidler.)

Mr. Alberts: I think I will go along.

Mr. Freeman: It won't be of interest—You don't need to stay.

Mr. Alberts: No. Here is that letter.

The Witness: That is the letter requested.

(Whereupon Mr. Alberts left the hearing room.)

(Here followed an intermission during which time Mr. Fidler examines file of documents.)

Mr. Fidler: I have just examined a file of documents handed to me by Mr. Freeman, which I understand he has produced in accordance with the request made by me in my letter to him of—

Mr. Freeman: That is, the request that you made to Mr. Ooms and not to me.

Mr. Fidler: That is right. To Mr. Ooms.

Mr. Freeman: I am just a messenger on that. What I am going to hand you tomorrow is what you request of me.

Mr. Ooms: The letter of April 8th.

Mr. Fidler: (Continuing)—In my letter of April 8th, and I understand that these are all of the documents now available, referred to in my letter.

286 Mr. Ooms: These are the documents, contracts produced earlier in the afternoon.

Mr. Fidler: Of these documents, I would like to mark for purposes of identification and as Automotive's Exhibit 4, an original letter dated October 26, 1938 from Snap-On Tools Corporation to Kenneth R. Larson, the same being signed by E. W. Myers, President.

Mr. Freeman: Why don't you go ahead and offer them, instead of having them marked for identification, and get them in and have it over with?

Mr. Fidler: I think I would rather do it this way.

Mr. Freeman: All right.

(Said document was thereupon marked by the Notary as Automotive Exhibit No. 4, for identification.)

Mr. Fidler: I also wish the reporter to mark, for identification, a copy of a letter from Mr. Alberts to Snap-On Tools Corporation with a copy to Mr. Kenneth R. Larson, dated August 15, 1939, as Automotive Exhibit 5.

(Said document was thereupon marked by the Notary as Automotive Exhibit No. 5, for identification.)

Mr. Fidler: And I also wish the reporter to mark, for the purposes of identification, and as Automotive Exhibit 6, the original of a letter dated May 25, 1942 from Snap-On Tools Corporation to Precision Instrument Manufacturing Company, Attention of Mr. Kenneth Larson, the letter
287 being signed by W. W. Daniel, Assistant Secretary.

(Said document was thereupon marked by the Notary as Automotive Exhibit No. 6, for identification.)

Mr. Fidler: There is one more question I would like to ask the witness:

Q. I hand you the letter marked for identification as Automotive Exhibit 4, and ask you whether or not this is the letter that has been referred to in your testimony as having been received from Snap-On and which you used in connection with the sale of stock for Precision Instrument Manufacturing Company?

A. Yes. This is it.

Mr. Fidler: Those are all the questions that I have.

Mr. Ooms: No questions from this side.

Mr. Fidler: I should say photostatic copies of these, instead of the letters themselves:

Mr. Freeman: Yes.

Mr. Hibben: I take it that you have no cross?

Mr. Freeman: No.

(Whereupon the foregoing deposition of the witness Walter Carlsen was concluded at the hour of 5:20 P.M., on Tuesday, April 13, 1943.)

Signature of Witness.

288. State of Illinois }
County of Cook } ss:

I, Thomas B. Goodwill, a Notary Public within and for the County of Cook and State of Illinois, do hereby certify that Walter Carlsen was by me first duly sworn to testify the truth, the whole truth and nothing but the truth, and that the foregoing deposition given by him was recorded by me stenographically and by me reduced to typewriting.

I further certify that the foregoing transcript of said deposition is a true record of the testimony given by the said witness, Walter Carlsen.

I further certify that said deposition was taken at the time and place specified in the written Notice of Taking Depositions and that the taking of said deposition commenced at the hour of 2:00 o'clock P. M., Central War Time, Tuesday, April 13, 1943, and was completed at about the hour of 5:20 o'clock P. M., Central War Time, in the afternoon of the same day and date.

I further certify that Messrs. Raymond E. Fidler, Esq., Harry W. Lindsey, Jr., Esq., George N. Hibben, Esq. and A. J. Smith, Esq. appeared as attorneys and counsel on behalf Automotive Maintenance Machinery Co.; that Casper W. Ooms, Esq. appeared at attorney for Precision Instrument Manufacturing Company and Kenneth R. Larson; and that Will Freeman, Esq. and Harry C. Alberts,

289 Esq. appeared as attorneys on behalf Snap-On Tools Corporation; and that each of said attorneys were present during the giving of testimony by the said Walter Carlsen during the afternoon of Tuesday, April 13, 1943.

I further certify that certain documents were marked by me as Automotive Exhibits Nos. 2 to 6, inclusive, for identification, during the taking of said deposition, and that, pursuant to oral agreement made by counsel for Au-

tomotive Maintenance Machinery Co. and Snap-On Tools Corporation, respectively, on Wednesday, April 14, 1943, said documents were retained by counsel for Snap-On Tools Corporation for the purpose of making and furnishing photostatic copies of said Automotive Exhibits Nos. 2 to 6, inclusive, to be offered for identification in lieu of the originals of said documents, with the same force and effect as though the originals were offered for identification.

I further certify that I am not an attorney or counsel for any of the parties, or a relative or an attorney or counsel connected with the action in controversy, or financially interested in said case.

In witness whereof, I have hereunto set my hand and affixed my Notarial seal on this 8th day of May, A.D. 1943.

*Notary Public within and for the County
of Cook and State of Illinois.*

My commission expires April 24, 1945.

290

SUPPLEMENTAL CERTIFICATE.

State of Illinois }
County of Cook } ss:

I, Thomas B. Goodwill, a Notary Public within and for the County of Cook and State of Illinois, do hereby certify that I requested the witness Walter Carlsen to read and sign his foregoing deposition given before me on April 13, 1943, at Chicago, Illinois, in the cause entitled Automotive Maintenance Machinery Co., Plaintiff, vs. Precision Instrument Manufacturing Company, Kenneth R. Larson and Snap-On Tools Corporation, Defendants, Civil Action No. 4382 in the United States District Court for the Northern District of Illinois, Eastern Division, and that the said Walter Carlsen refused to sign his said deposition on the ground that it might incriminate him.

I further certify that the attached transcript of the said deposition of Walter Carlsen consists of pages 1 to 81, inclusive, and the notarial certificate (pages 82 and 83).

In witness whereof, I have hereunto set my hand and affixed my Notarial seal on this 15th day of May, A. D. 1943.

Thomas B. Goodwill,

*Notary Public within and for the
County of Cook and State of Illinois.*

(Seal.)

My commission expires April 24, 1945.

291. Deposition of Joseph Johnson taken in the above-entitled cause by the Automotive Maintenance Machinery Co., before Thomas B. Goodwill, a Notary Public of Cook County, Illinois, on Wednesday, April 14, 1943, at Suite 1400 Field Building, 135 South LaSalle Street, Chicago, Illinois, pursuant to Notice and proof of service shown thereon.

292 State of Illinois }
County of Cook } ss:

JOSEPH JOHNSON, called as a witness by the Automotive Maintenance Machinery Co., Plaintiff, being first duly sworn by the Notary Public, was examined and testified as follows:

Examination by Mr. Fidler.

Q. Please state your name?

A. Joseph Johnson.

Q. Your age?

A. Nearing forty-nine.

Q. Your residence?

A. 4203 Taft Road, Kenosha, Wisconsin.

Q. And your occupation?

A. Manufacturing executive.

Q. Of what company?

A. Snap-On Tools Corporation.

Q. Of Kenosha Wisconsin?

A. Yes, sir.

Q. What executive office do you hold in that company?

A. President.

Q. How long have you been president of Snap-On?

A. Since the spring of 1939.

Q. And who was president prior to that time?

A. Mr. E. W. Myers.

Q. What executive position did you hold in Snap-On prior to that time?

A. Vice President.

Q. —before you became president?

A. And treasurer.

293 Q. Do you know Kenneth R. Larson?

A. I do.

Q. How long have you known him?

A. Oh, I would say for approximately five years.

Q. Under what circumstances did you first meet him?

A. I met him through some of the associates in the office, at about that time.

Q. What associates?

A. I met him through Mr. Myers.

Q. Anyone else?

A. Also through a Mr. Allen G. Howes, formerly with the sales department.

Q. Do you know whether Mr. Larson has any relative employed by Snap-On?

A. I do not.

Q. Whether he had in 1938?

A. I do not.

Q. Are you familiar with the Third Amended Petition for Declaratory Decree filed on behalf of Snap-On Tools Corporation in this case?

A. I probably am, but I don't know what the document is.

Q. I hand you a copy of a document which appears to be a copy of the Third Amended Petition which is referred to in my previous question, and ask whether or not you are familiar with this paper? That is a copy I have with me.

294 (Mr. Fidler hands said document to Mr. Freeman and after Mr. Freeman and Mr. Alberts examined said document, Mr. Freeman handed it to the witness.)

Mr. Freeman: That is a copy that your office made?

Mr. Fidler: Yes.

Mr. Freeman: I mean that is not a copy like the one that is on file, like a duplicate original?

Mr. Fidler: No. It is a copy made in our office from the copy served upon us, of the Third Amended Petition.

A. Yes, I believe I am familiar with that.

Q. Did you approve of the filing of that Petition, before it was filed?

A. I believe so. I can't definitely say.

Q. Well, were you consulted in respect to it, before it was filed?

A. I probably was.

Q. Well, do you have any recollection about it?

Mr. Freeman: If you are asking whether that is an act of Snap-On, we will concede that it is.

Mr. Fidler: I am asking whether or not the witness had any personal knowledge of it, at the time it was filed or prior to the time it was filed.

A. I would say yes, I did.

Q. Now I call your attention to paragraph (30) of that Petition and to the part thereof that reads as follows:

"Petitioner alleges that the application eventuating into Letters Patent No. 2,279,792 was declared by the 295 United States Patent Office to be in interference with the applications for Letters Patent Nos. 2,283,888 and 2,269,503; that said interference was identified in the United States Patent Office as No. 77,565 and was a proceeding in which the question to be determined was whether or not the party Larson had invented the subject matter of certain counts of said interference prior to the party Zimmerman; that pursuant thereto in October 1940, testimony of Larson and several witnesses in behalf of Larson was taken under oath at Chicago, Illinois, before Esther Meltzer, a Notary Public commissioned in the State of Illinois;"

Are those statements correct?

A. I believe they are.

Q. Well, you had personal knowledge of such an interference, did you not?

A. I probably did.

Q. You haven't any recollection?

A. No doubt it was called to my attention.

Q. Then, paragraph (30), that I have been reading from, further states:

"that Kenneth R. Larson, one of the witnesses, did then and there falsely testify on his own behalf under oath that he had invented and made a wrench embodying the subject matter of the counts then in interference in the year 296 1934, and that he had produced several models which he identified, and a drawing which he testified as having been made prior to the summer of 1936; whereas in fact the wrenches, models, and drawings referred to had not been made until the years 1937 and 1938;"

Is that statement true?

A. I have since learned that it is, yes.

Q. When did you first learn that that statement was true?

A. Late in the fall of 1940, I believe it was, I was called by Mr. Alberts to attend a conference at your office, at which time you presented some evidence disclosing testi-

mony on the part of one of your witnesses that certain facts were not as reported or testified by Mr. Larson. That was the first knowledge that I had of it.

Q. Well, at that time, did you know that facts had been testified to by Mr. Larson and his witnesses?

A. I did not.

Q. Well, how did you know that was contrary to the facts that had been testified by Mr. Larson and his witnesses?

A. Because that was brought out in questioning, in your office.

Q. In what way?

A. You had there a man by the name of Thomasma that Mr. Alberts questioned, and who refused testimony that Larson had given.

Q. Mr. Alberts questioned him?

A. Yes, he did.

Q. Well, what facts did Mr. Alberts bring out from Mr. Thomasma?

A. One of the things had to do with a drawing covering the conception of the tool.

Q. Is that all that you recollect?

A. And also that he had been connected with Larson in some of his endeavors and he also, speaking now of Thomasma, was an employee of the Automotive Maintenance Machinery Company.

Q. Is that all you can recollect?

A. You mean with respect to Mr. Alberts' interrogation of Thomasma?

Q. Yes.

A. Well, I believe that covered some of the essentials.

Q. Now, when was it that that conference was held at my office, at which time Mr. Thomasma was questioned?

A. It was late in the year 1940, November I believe.

Q. Do you know what date it was in November?

A. I believe it was the last week in the month.

Q. And who was present at that conference?

A. Well, we will start with you. We came there to see you originally. And Mr. Alberts and myself were there. Later on, Mr. Wacker and Mr. Allen came in, and there was another party that I didn't see enter the office, whom we later met, and that was this fellow Thomasma, or whatever his name is.

Q. Weren't Mr. Wacker and Mr. Allen there at the time that you and Mr. Alberts came in?

A. No. They came in a little bit later.

Q. And was there any conversation of any kind before they came in?

A. I do not believe so, no, nothing other than preliminaries. They followed rather shortly after we got there.

Q. Nothing was said about the case or any of the evidence, or Thomasma, or anything?

A. Well, at the time, Mr. Alberts did have one statement that he made to you, and, that was that both he and I were there principally—or I should say solely in the interests of Snap-On Tools.

Q. And do you remember any statement that you made respecting also that you were there with clean hands?

A. Yes, sir.

Q. How did you happen to make that statement?

A. Well, I made that statement when some reference was made by you that Snap-On's hands were not too
299 clean in this whole picture. There was some inference or insinuation on your part that we were doing something adverse—

Q. Adverse to what?

A. Well, I don't know. It was your accusation at the time.

Q. Something adverse to Automotive?

A. Yes, as I recall it, that Mr. Wacker had spent considerable money on this patent and that our attitude or action was delaying it at the time.

Q. And any reason given with respect to delaying it, by me or anyone else?

A. Well, at that time, as I recall it, Mr. Alberts said that if this testimony or evidence turned up by Thomasma would be supported, that he would immediately withdraw as attorney for Precision.

Q. What had your prior relations, prior to that conference, with Automotive been?

A. Well, in a sense I am sorry that question came up, because Vic Allen and I had been pretty good friends. I looked forward to it, originally, to be on that high plane of our previous friendship, but, I can say here for the record that our relationship with Automotive was not considered satisfactory by us.

Q. What had been that relationship?

300 The Witness: You are speaking now of a previous relationship?

Mr. Fidler: Yes.

A. It was strictly a personal relationship between Vic Allen and myself.

Q. Did Automotive have any dealings with Snap-On prior to the conference that you have been talking about?

A. The one in your office?

Q. Yes.

A. Yes, we did.

Q. What were those dealings?

A. Well, Mr. Allen called me originally, and I don't recall at what time this took place, asking if we would be interested in manufacturing for them adapters for their Torgometer—I mean their tension measuring device. That I believe was our first relationship with them, in a business way.

Q. And did that relationship continue after that?

A. I don't recall now. We may have made a small number of units for them.

Q. Well, isn't it a fact that Automotive made for Snap-On Tools Corporation wrenches which were sold by Snap-On?

A. Yes. That came later.

Q. When did that relationship begin?

301 A. I believe it began in 1937.

Q. Do you remember what time?

A. I do not.

Q. How long did that relationship continue, the supplying of wrenches by Automotive to Snap-On?

A. I wouldn't be venturing only a guess, but I would say that it ran slightly in excess of a year, maybe a year and a half.

Q. Were you being supplied wrenches by Automotive—I mean was Snap-On being supplied wrenches by Automotive at the same time that you were being supplied wrenches by Precision Instrument Manufacturing Company?

A. Not to my knowledge; no.

Q. Was Snap-On being supplied with wrenches by Automotive after Snap-On entered into an agreement with Precision for the manufacture of wrenches?

Mr. Johnson: I would like to have that question read, please.

(Question read by the Notary.)

A. I do not know.

Mr. Fidler: Q. Now going back to that conference in

the last week in November, in my office, about how long were you and I and Mr. Alberts together, before Mr. Walker and Mr. Allen came in?

302 A. I don't recall definitely.

Q. Do you recall anything else that we discussed before they got there?

A. I don't recall.

Q. Now, when Mr. Wacker and Mr. Allen came in, was there any discussion?

A. As to what?

Q. As to any matter at all?

A. Well, as I recall it, I believe that the discussion of the matter in question was commenced when we all got together.

Q. And what was the discussion?

A. It had to do with some new developments that you had in the case.

Q. Well, do you recollect what was said, in that respect? If so, what was it?

A. Well, I believe that the gist of the whole thing was that you had uncovered a witness that had refuted the testimony given by Larson, and that you were prepared to produce him for Mr. Alberts' questioning.

Q. And did you at that time again express the fact that you were there with clean hands?

A. I no doubt did, yes.

Q. And why did you do that, after Mr. Wacker and Mr. Allen came in?

A. Well, I think I mentioned at the time that we had
303 always done business on a very high, clean plane and that the information being disclosed there was something that was certainly not of our knowledge. Furthermore, the inference made by you, that our hands were not clean, probably prompted me to tell you, at the time, that we had been known as a company doing business on a very high plane.

Q. How long were we in conference before Mr. Thomasma came in, do you know?

A. I don't recall.

Q. Do you recollect anything else that was said or discussed before Mr. Thomasma came in?

A. No, I don't recall.

Q. Now, when Mr. Thomasma came into the room, what was done?

A. You probably introduced him. I don't recall whether or not you did, but you did turn him over to Mr. Alberts. I believe that you and Mr. Alberts had had a previous conference, about a week before.

Q. And Mr. Alberts did the examining of Mr. Thomasma?

A. Yes. He asked certain questions.

Q. Are you quite sure of that?

A. I am quite sure of it, yes.

Q. When was the first time that you were informed that the testimony given by Mr. Larson and his witnesses was false?

A. At the day of the meeting in your office.

304 Q. When was the first time that you were informed that the testimony given by Mr. Larson and his witnesses, in the Interference, was possibly false?

A. Well, I believe that Mr. Alberts had had some anonymous call that I remember he reported to me, which came in one time, and then following that, you were in touch with him and said that you had some interesting new facts in the case, and I believe that was a meeting at which he met with you alone.

Q. Do you remember when that was?

A. It was about a week prior to our meeting.

Q. When Mr. Alberts first reported the anonymous call, to you, what did he say. What did Mr. Alberts say to you?

A. Well, he reported that he had an anonymous call. As to the directness of the call or the direct message, I don't recall that at this moment.

Q. Was that over the telephone?

A. It was over the telephone, as I understand it, yes.

Q. And do you recollect at all what he said, Mr. Alberts, when he called you on the telephone?

A. I believe that in this call some mention was made that the testimony given by Larson was not true testimony.

Mr. Freeman: Are you talking about the anonymous call?

Mr. Fidler: The anonymous call.

305 Mr. Freeman: (Continuing) Or the call I had understood you to say, the call from Mr. Alberts to Johnson?

Mr. Fidler: That is right, in respect to the anonymous call.

Mr. Freeman: Well, just so the witness understands

that he is testifying with respect now to a telephone call received from Harry Alberts.

The Witness: Yes.

Mr. Freeman: And not with respect to some anonymous call which Harry Alberts received.

Mr. Fidler: Q. Now, what did Mr. Alberts tell you, when he talked to you over the telephone, about that anonymous call that Mr. Alberts had received?

The Witness: I have already answered that question.

Mr. Fidler: Q. Well, what was it?

A. That some party called him anonymously and made the statement that the testimony given in the case had not been true.

Q. Is that all that Mr. Alberts said?

A. Well, he probably said more. That is all I recall. That was the gist of the matter.

Q. Were you informed over the telephone by Mr. Alberts in respect to the conference that he had alone with me?

A. No, I don't know what developed in that conference. He said that he had a meeting scheduled with you; that you had asked him to come to your office, which he did.

306 Q. Well, after the conference in my office alone did Mr. Alberts report to you on our conference?

A. He did not, so far as I recall.

Q. Did not Mr. Alberts get in touch with you and tell you that arrangements were going to be made, or had been made, to have Mr. Thomasma come in, so that you could hear what he had to say?

A. I was coming back from Canada, when I received a telegram on the train, asking me to stop off here, and that was the day on which these meetings were held.

Q. Now, during the conference in my office, in the last week in November, at which time Mr. Thomasma was present, were you present during all the time that Mr. Thomasma was talking?

A. If you mean within the presence of the group, yes, but as to presence in your office, no.

Q. Well, during all the time that Mr. Thomasma was telling his story—

A. Yes.

Q. —you were present, were you not?

A. I was, yes.

Q. And after Mr. Thomasma had told his story, what did you do?

A. Well, as I recall, Mr. Alberts at that time said that if the facts or testimony as given by him were correct, that there was only one thing that could be done and 307 that would be to grant a priority of application, or whatever it is, I don't know, concession of priority.

Q. That was said at that meeting in my office?

A. It was, yes.

Q. And who was present when that was said?

A. Mr. Allen, Mr. Wacker, Mr. Fidler, Mr. Alberts and myself.

Q. Do you recollect any remark that you made, after having heard Thomasma's story?

The Witness: With respect to what?

Mr. Fidler: Q. (Continuing.) With respect to what you had heard from Mr. Thomasma?

A. Of course, I believe it was at that time that I did make a statement to the effect that we had always done business on a very clean, high plane, and that that testimony certainly was shocking to me.

Q. Do you recollect saying that "It smells to the high Heavens"?

A. I may have said that.

Q. But, do you recollect that you did?

A. I do not definitely recollect that, no.

Q. Do you recollect what Mr. Alberts said, after having heard Mr. Thomasma's story?

A. I don't recall, other than he probably mentioned that we would have to immediately get in touch with the other parties; also, that if the facts as reported were true, 308 that he certainly would not longer serve as their legal counsel.

Q. Now, you left the conference shortly after Mr. Alberts made that statement, did you not?

A. Probably so, yes.

Q. And did you or Mr. Alberts make any investigation to determine whether or not Mr. Thomasma's story was true?

A. We did.

Q. What was that?

A. Mr. Alberts immediately telephoned the Precision Company and asked for the principals to come in to his office here in Chicago.

Q. And who were they?

A. Larson and Carlsen.

Q. That is, Kenneth B. Larson and Walter A. Carlsen?

A. Yes, sir.

Q. And did they come in?

A. They did.

Q. And do you know why Mr. Alberts had them come in that day?

(At this point in the taking of testimony, Mr. Ooms left the hearing room temporarily.)

A. Well, he can probably answer that. I don't know what was in his mind at the time.

Q. Well, when they did come in, what transpired?

A. Well, Mr. Alberts told him about the conference held in your office, about this man Thoniasma and what had taken place, and immediately questioned Larson as to whether or not testimony given by him was true.

(Whereupon Mr. Ooms returned to the hearing room.)

Mr. Fidler: Q. And what did Mr. Larson say?

A. Well, it took a little while before Larson admitted that the testimony he had given was false.

Q. Did Mr. Alberts also talk to Mr. Carlsen?

A. He was directing his remarks principally to Kenneth Larson.

Q. Well, were any remarks directed to Mr. Carlsen?

A. Well, I don't know, but I would assume that in directing them, as they were associates, that it would cover both of them.

Q. What did Mr. Carlsen say?

A. Respecting what question?

Q. Regarding whether or not the testimony that they had given in the Interference was true.

A. No do not recall.

Q. Well, did Mr. Carlsen say anything?

A. No. He was very quiet.

Q. About how long did Mr. Alberts and you discuss this matter with Larson and Carlsen?

A. Oh, it might have been for an hour, or three quarters of an hour.

Q. Did you question Larson about it at all?

310 A: I believe I did. I certainly was mad enough at the time.

Q. What did you say to Mr. Larson?

A. Well, naturally the same things were going through

my mind that Mr. Alberts no doubt had on his, and that was to check to see whether or not these statements made by Thomasma were correct?

Q. And what did you decide in that respect, as to whether or not they were correct?

A. Well, Larson finally admitted that some of his testimony was false.

Q. Was there any discussion with Mr. Larson as to the testimony of any of the other witnesses that testified on his behalf?

A. No.

Q. Was not the full extent of the investigation that you referred to, that was made?

A. Yes, because he admitted and corroborated what we had heard in your office from your witness.

Q. After you and Mr. Alberts had talked to Mr. Larson and Mr. Carlsen, then what did Mr. Larson and Mr. Carlsen do?

A. Well, they left rather suddenly, I might say.

Q. Do you know why they left suddenly?

A. I believe I do, yes. Mr. Alberts, after Larson admitted that his testimony had in part been false, said to him that he certainly could no longer represent 311 him and that he would have to be represented by other counsel.

Q. And they left to retain other counsel?

A. They went to see someone, yes.

Q. But you did not have anything to do with that?

A. I had nothing whatsoever to do with that.

Q. Did you ever have anything to do with Larson and Carlsen after that time?

The Witness: After what time do you mean?

Mr. Fidler: Q. (Continuing.) After the time that they left the office and went to retain other counsel?

A. No, I didn't see them again for some time.

Q. Did you see them again before the Interference was finally settled?

A. I probably did.

Q. You don't recollect?

A. I don't definitely recollect, no.

Q. Did you see Mr. Larson and Mr. Carlsen again, after that conference in Mr. Alberts' office with them on the day of the conference in my office, prior to the time that you

entered into the Interference settlement agreement with Automotive?

A. I do not recall. I may have seen them.

Q. Was there any necessity for your seeing them?

A. I don't know why. The matter has been in the hands of counsel who has represented us since the year 1926. Likewise, it has been in large part handled by associates.

Q. You recollect, do you not, that in settlement of the Interference, Snap-On and Automotive entered into an agreement about December 20, 1940?

A. Yes, there was an agreement entered into.

Q. I show you a copy of an agreement, which is attached to the Petition filed by Snap-On in this case as Exhibit 4, and ask you whether or not that is the agreement just referred to and which was entered into between Snap-On and Automotive in settlement of the Interference No. 77565?

(Mr. Fidler hands document to the witness.)

(The witness, Mr. Johnson examines said document.)

A. This is not the signed copy, but I have seen it.

Q. That is the agreement, then, that you referred to?

A. Yes.

Mr. Freeman: That is a copy you prepared from the one attached to the Petition?

Mr. Fidler: That is correct, and is subject to correction or checking, if you care to do it.

Mr. Freeman: Well, if you tell us that it is a copy that you made, that is all that is necessary.

Mr. Ooms: The one attached to the Petition is admitted.

Mr. Freeman: Sure.

Mr. Ooms: We have alleged that we executed it.

Mr. Fidler: Q. Who represented Snap-On in the negotiations leading up to this agreement which is Petitioner's Exhibit 4 in this case?

The Witness: The one I have just seen?

Mr. Fidler: Yes.

The Witness: A. It carries the name of Harry C. Alberts, who has been our counsel since 1926 on patent matters.

Q. By Mr. Fidler: And Mr. Alberts represented you in all negotiations leading up to the execution of the agreement, Petitioner's Exhibit 4, is that correct?

A. Yes, he is Snap-On's attorney.

Q. Did you make any contacts with anyone in respect to that agreement, other than with Mr. Alberts?

A. All those matters have been handled through Mr. Alberts. He is our counsel.

Q. Well, was Mr. Alberts the only one, the only attorney that represented you in the negotiations leading up to the conclusion of this agreement, Petitioner's Exhibit 4?

A. I believe so.

Q. Now, after Mr. Larson and Mr. Carlsen left Mr. Alberts' office on the day of the conference in my office, what did you do next?

A. Well, shortly after, I got my associates together and I asked Mr. Alberts to be present at that meeting and to present to them the entire outline of this development.

I had made the statement to Larson and Carlsen, 314 in Mr. Alberts' office, that from where I sat, so far as I was concerned, I was definitely through with them.

Q. And when did that meeting with your associates take place?

A. Oh, I think it was within less than a week after that.

Q. And at that meeting what was discussed besides the statement that you say that you made to them?

A. I don't quite get your question there?

Q. Well, what was discussed at that meeting, that you had with your associates, after the meeting with Mr. Alberts, Mr. Larson and Mr. Carlsen in Mr. Alberts' office?

A. Well, he outlined what had happened all the way through, and when we got through with it, why, we just decided that we were through with Precision.

Q. Who outlined this?

A. I say Mr. Alberts was there at the meeting.

Q. And he outlined to your associates—

A. He did, exactly what had transpired.

Q. What did he say in outlining the matter to them?

A. Well, it had to do with the matter of the false testimony given by Larson and the fact that many statements made to us were not substantiated in fact.

Q. Made to you by whom?

A. By Larson.

Q. Had you made an effort to substantiate those statements that Mr. Larson had made to you?

315 The Witness: Had we made an effort to?

Mr. Fidler: Yes.

The Witness: Well, I don't know how far we could go with that. What do you mean? What does your question imply there?

Mr. Fidler: Q. Well, Mr. Larson, you say, made certain statements and you had not been able to substantiate them. What statements were those, that Mr. Larson had made?

A. Well, those that he had made in testimony; he said, for example, that he had made a drawing of this thing quite a few years ago and had models made, which later developed to be falsehoods.

Q. And those were the statements by Mr. Larson that you could not substantiate, is that correct?

A. They were, yes.

Q. Now, after the meeting with your associates, at which time Mr. Alberts explained the matter of Mr. Larson's testimony, what did Snap-On do?

A. Well, there was nothing else left to do at the time, and that was to at least let our arrangements run out with the Precision Company.

Q. What do you mean by let your arrangements run out with Precision Company?

A. Well, I mean to follow through on the agreements 316 between the various parties. AMMCO did, under the agreement, allow a certain number of tools to be completed that had been on contract for some time, and that is what I refer to when relations were being completed.

Q. That wasn't the next thing that Snap-On did after the meeting with Mr. Alberts and your associates, was it?

The Witness: You are first telling me, and then you are asking me. I don't quite get your question there.

Mr. Fidler: Q. What was the next thing that Snap-On or you and your associates did, after the meeting at which Mr. Alberts explained the Larson situation to them?

A. Well, no doubt our new tools department began an investigation on the market to see what other tension wrenches were available. Likewise, there had been some experimenting going on in their own laboratories.

Q. Well, after that meeting, you entered into negotiations with Automotive, did you not?

A. There were some final papers drawn. You have

them, and I think we have admitted all of them as part of this case, whatever they are.

Q. It is a fact, is it not, that after the meeting between your associates and Mr. Alberto, that you did enter into negotiations with Automotive, is that correct?

A. Yes, with respect to completing the contracts on certain Torquemeters.

317 Q. And those negotiations terminated in this agreement, Petitioner's Exhibit 4, is that correct? Mr. Fidler hands document to the witness).

A. Yes, sir.

Q. Well, why did you enter into this agreement, Petitioner's Exhibit 4? By "you" I mean Snap-On Tools Corporation?

A. Well, there was a lot of pressure put on this fellow Larson, you had already produced a witness who said that Larson's testimony was false, and which he admitted, and with some of the threats that were made with respect to the partners in the Precision Company, our corporation released, made the release under this agreement.

Q. What did what Larson had done have to do with Snap-On?

A. I don't quite follow you on that one?

Q. Why was it necessary for Snap-On to enter into an agreement with Automotive, in view of anything that Mr. Larson had done?

A. You might ask that question of our counsel, who we look to for direction in matters of this kind.

Q. You can't answer the question?

The Witness: Not right at the moment, I can't, no.

Mr. Fidler: Q. You referred to threats in your previous answer, in respect to Mr. Larson. No threats were made to you with respect to Larson, were there?

318 A. No. They weren't, but they were made within my hearing in the meeting we had over at your office.

Q. Where were you when the threats were made?

A. I was right in the office with you, at the time.

Q. And who made such threats?

A. You did.

Q. What was said?

A. You said at the time, that—in other words, you inferred that Snap-On did not have very clean hands, that this whole thing was being held up, and that Mr. Wacker had spent considerable money for the patents and that he

wanted to get some speedy action on it and was ready to unleash the dogs; furthermore, that the testimony given had been discussed with the District Attorney, and that dire threats were held out for both Larson and Carlsen on false testimony.

Q. Those statements were made?

A. They were made, yes.

Q. And made by me?

A. And made by you, yes.

Q. And you swear that to be a fact?

A. Yes, I do.

Q. Now, what else was said?

A. What do you mean, what else was said?

319 Q. At the time that the threats were made?

Well, I don't recall. This all took place in sequence at your office, at the time.

Q. Were you present when those statements were made?

A. Yes, I was.

Q. And it was in my office?

A. It was in your office, yes.

Q. And who else was present at the time?

A. The entire group that we had there, Mr. Wacker, Mr. Allen, Mr. Alberts, I believe Thomasma was in there, I am not definitely sure of him, and myself.

Q. In your previous answer, you said that you inferred that certain threats were made.

Mr. Ooms: He didn't say that.

Mr. Hibben: Yes, he did. I am sorry.

Mr. Lindsey: He did.

Mr. Fidler: Q. Were those threats actually made, or do you infer that they were made?

A. I don't say that—in other words, I can't quote you word for word on this, but at least I got that inference, that you were already to shoot and tear after these two boys.

Q. Now, will you state in as exact words as you can what you say that I said?

A. Well, I tell you, as nearly as I can recall it, it is this: That we didn't entirely have clean hands in it, and I speak now of Snap-On; that was the inference or accusation made by you, and that Mr. Wacker had considerable money in these patents, and that he wanted to get some action, and that he was ready to unleash the dogs.

Q. Anything else said?

A. Reference was also made to the statement that this

perjured testimony could be or would be turned over to the District Attorney.

Q. Anything else said, that is, by me?

A. I don't recall.

Q. Was anything said by Mr. Wacker?

A. No. Not a great deal. I don't recall his exact words at the time.

Q. Was anything said by Mr. Allen?

A. No, sir.

Q. Do you recollect that you said that you had never heard of Mr. Thomasma before?

A. I did, yes, sir.

Q. Do you recollect that Mr. Thomasma turned around to you and said that he was surprised because he had been at your plant several times?

A. I don't know why there should be any surprise. I don't see everybody that comes into that plant.

321 Q. But do you recollect that he said that to you?

A. He may have. I don't know whether he did or not.

Q. You do not recollect?

A. I do not, no.

Q. Was anything else said at that conference at my office, that you think of?

A. I think I have enumerated what I considered were the essential points brought out at the time.

Q. Well, what was the basis of the decision that you made yourself, in my office that day, when you heard Mr. Thomasma's story?

A. Well, that was that if his testimony was supported that we certainly would grant concession of priority.

Q. Who made the decision as to the granting of priority to the party Zimmerman, in the Interference?

The Witness: Are you speaking now of the conversation in your office?

Mr. Fidler: No.

The Witness: Because Mr. Alberts told you, at that time, the same as I have just said, that if that testimony is supported, then he would recommend and would grant a concession of priority.

Mr. Fidler: Q. Well, you know that a concession of priority was given by Mr. Larson to Zimmerman, in Interference No. 77,565, do you not?

322 A. Well, if there was, it has been given, if it is in the records.

Q. You don't know that fact, of your own knowledge?

A. Probably I do.

Q. Who made the decision, that priority should be given to Mr. Zimmerman by Mr. Larson in that Interference?

A. We probably acted upon advice of counsel.

Q. Was that decision made in the meeting with your associates, at that time when Mr. Alberts explained the situation?

A. I don't recall whether it was in that meeting or not, to be frank.

Q. Well, was there any other meeting?

A. I referred to the meeting in which we called Larson and Carlsen.

Q. Oh, you decided at that time, that you should give it?

A. I may have tentatively told Mr. Alberts. No doubt he strongly advised it and recommended it, and I subscribed to it.

Q. At the time that Mr. Alberts called you and said that he had this anonymous call about the testimony in the Interference, did you instruct Mr. Alberts to make investigation in that respect, at that time?

A. I don't know how he could make one, on an anonymous call.

323 Q. Did you instruct him to make an investigation, at that time?

A. Not that I recall.

Q. Do you know whether any investigation was made by Mr. Alberts or anyone else, at that time?

The Witness: As to the anonymous call?

Mr. Fidler: Yes.

A. I don't recall.

Q. After you had talked to Mr. Larson and Mr. Carlsen, in Mr. Alberts' office, did you or Mr. Alberts talk to any of the other witnesses, that had testified on behalf of Mr. Larson?

A. I don't know of a single witness in the case; I don't know of a single one, no.

Q. Did you or Mr. Alberts talk to any of Mr. Larson's witnesses in the Interference, after being advised with respect to the anonymous call?

A. No, sir. I have never met or seen them; I don't know any of them.

Q. Did you or Mr. Alberts talk to Mr. Larson, after that anonymous call and before the conference in my office?

A. I doubt it very much.

Q. Well, do you know for sure?

The Witness: Will you restate that for me, please?

Mr. Fidler: Q. After you had been advised by
324 Mr. Alberts respecting the anonymous call, and prior
to the time of the conference in my office, did you make
any investigation by talking to Mr. Larson, respecting
the anonymous call?

A. I didn't do it personally, no.

Q. Did Mr. Alberts?

A. I can't speak for Mr. Alberts.

Q. Did Mr. Alberts tell you the purpose of the conference that he had alone, in my office, with me, about a week before the conference at which you were present?

A. No. The only thing I knew is that you had some interesting new evidence or information.

Q. Did you instruct Mr. Alberts, at that time, to make an investigation in respect to the testimony given in the Interference; I mean after he told you he was going to have a conference with me?

A. I don't know, on that one.

Q. Well, Mr. Alberts advised you that he was going to have a conference with me alone?

A. I understood that he was going to your office, yes.

Q. And he told you that it was in respect to some facts that had developed in connection with the Interference?

A. Yes.

Q. And did he tell you that it had to do with facts that might show the information given by Larson
325 and his witnesses to be false?

A. No, not at that time.

Q. Do you know whether or not Mr. Alberts made any investigation of the testimony of Mr. Larson and his other witnesses, after having so advised you respecting the conference with me?

A. I don't think he did.

Q. Now, again referring to paragraph (30) of Snap-On's Petition filed in this case, it states, "that respondent and its agents were aware that said testimony and evidence were false."—What is the basis of that allegation?

A. This was (Witness indicates document)— You better check that with the attorney representing us in the case, Mr. Alberts.

Q. Well, you approved of this Petition, did you not?

A. I probably did.

Q. Prior to the filing of the Third Amended Petition in this case, there was filed an original petition, an amended petition, a first amended petition and a second amended petition.

Mr. Ooms: Has the reporter got that straight?

Mr. Fidler: Q. There were filed an original petition, a first amended petition and a second amended petition. You verified those first three petitions, did you not?

A. I probably did.

326 Mr. Freeman: Isn't the record here the best evidence, whatever the record shows, as to his verification?

Mr. Lindsey: We haven't the original pleadings. Here is a copy that bears the signature of Harry Alberts. Ask them if they will admit that.

Mr. Freeman: Well, any paper that has been filed we will admit.

Mr. Fidler: The original petition, according to the copies in my files, as well as the first amended petition and the second amended petition, were signed by Joseph Johnson, as president of Snap-On Tools Corporation, and by Mr. Harry C. Alberts as attorney for Snap-On.

Mr. Lindsey: Is that Johnson's signature?

Mr. Freeman: That isn't Johnson's signature, but we will concede that the copy that was filed had Mr. Johnson's signature on it, because that is the original signature of Harry C. Alberts.

Mr. Lindsey: And the verification by Mr. Johnson?

Mr. Freeman: If the pleadings show that it was verified by Mr. Johnson, we will concede that it was verified and signed by him, yes.

Which one did you show me there? I am making that concession only with respect to the one you showed me.

Mr. Fidler: That is the second amended petition.

327 Mr. Freeman: That is right.

Mr. Fidler: Q. I will also show you copies of the original petition served upon Automotive.

(Mr. Fidler shows document to Mr. Freeman.)

Mr. Freeman: This is the copy that you got?

Mr. Fidler: This is the copy that was served upon us.

Mr. Freeman: All right. Yes, we will concede that that was signed—

Mr. Fidler: That is the original petition.

Mr. Freeman: —that that was signed and verified by Mr. Johnson.

Mr. Fidler: And the amended petition I have referred to as the first amended petition was also signed and verified by Mr. Joseph Johnson, and also by Mr. Harry C. Alberts, Attorney for Snap-On, and verified by Mr. Johnson.

Mr. Freeman: Correct.

Mr. Fidler: Q. As I understand it, then, you do not know the basis for the allegation "that respondent and its agents were aware that said testimony and evidence were false," is that correct?

The Witness: Will you read that question?

(Pending question read by the Notary.)

Mr. Lindsey: The "respondent" there is Automotive.

The Witness: You say that "respondent" there is 328 Automotive?

Mr. Fidler: Yes.

A. Well, in here he has been so charged, and I am familiar with that.

Q. Well, this pleading alleges (I am referring to Snap-On Third Amended Petition) "that respondent," that is Automotive "and its agents were aware that said testimony," that is the testimony given by Larson and his witnesses, "and evidence were false." Do you know the basis of that statement in this pleading?

A. As to how you obtained the evidence that Larson's evidence was false?

Q. I am asking you what you, as an individual, can say as to the basis of that allegation in this pleading?

A. Well, I have got to refer back to the meeting held in your office, where you produced the witness Thomasma, and at our later conference with Larson and Carlsen in Mr. Alberts' office, where Mr. Larson admitted, finally admitted that the testimony in part was false.

Q. Was I present at that meeting in Mr. Alberts' office, when Mr. Larson and Mr. Carlsen admitted it?

A. You were not.

Q. Was anyone from Automotive present?

A. They were not.

329 Q. Did you or anyone from Snap-On ever tell me that Mr. Larson had so admitted?

A. I don't know.

Q. Well, did you ever tell me?

A. I didn't tell you, no.

Q. Did you ever tell anyone of Automotive that Mr. Larson had so admitted?

A. I haven't had direct contact either with you or Automotive, or anyone else, in this case.

Q. And you cannot say that anyone representing Snap-On, from your own knowledge, ever told me that Mr. Larson had admitted that that testimony is false; isn't that correct?

A. Well, I don't know what the procedure is between attorneys, but I presume that you are kept informed, one to the other, as to the developments.

Q. But you cannot say that I was informed, from your own knowledge?

A. I cannot say that, no.

Q. In that allegation that I just read to you, it states "respondent," or Automotive, "and its agents." Who are the agents there charged?

A. You will have to check with counsel on that.

Q. You don't know?

A. I don't know.

330 Q. The Third Amended Petition filed by Snap-On further alleges:

"and charged said Larson with the crime of perjury and threatened to institute prosecution against said Larson unless Larson and the Precision Instrument Manufacturing Co. transferred to respondent," that is Automotive, "the Larson patent application and the sum of Five Hundred (\$500.00) Dollars and executed the agreement identified herein as Exhibit 6." What is the basis of that allegation?

A. That is probably a matter between you attorneys.

Q. You don't know?

A. I don't know. That is the procedure between the two legal forces.

Q. It is further alleged, in Snap-On's Third Amended Petition: "and in consideration thereof respondent," that is Automotive; "promised to withhold its information and complaint and, further, would suppress the evidence of said perjury;" what is the basis of that allegation?

A. I am personally not familiar with that.

Q. It is further alleged in paragraph (30), of Snap-On's Amended Petition, "that the said Larson patent application and certain rights thereunder were at that time held by petitioner under an agreement attached hereto and identified

as Exhibit 5; that in order to procure Larson's release
331 under the Exhibit 5 agreement from petitioner," that
is, Snap-On, "respondent," that is, Automotive, "also
threatened and its attorney who was then acting as attorney
for Larson in the aforesaid interference, with the
crime of possessing and concealing knowledge of the commission
of said perjury by Larson and others in his behalf ... and with action for alleged civil and criminal
conspiracy to defraud and damage respondent," that is,
Automotive, "by unwarrantedly delaying the issuance of
its patents with perjured testimony and evidence fostered
or intended to be fostered upon the Patent Office;"—In
reading from the Third Amended Petition, I have omitted
reference to the title of the U. S. Code mentioned.

Will you please state the basis of the statement or the
allegation that I have just read from the Third Amended
Petition?

A. I say there again is a matter that probably developed
in the relationship between the several attorneys.

Q. What attorneys?

A. I am speaking now of your firm and Mr. Alberts.

Q. And that relationship did not exist between any
332 officer or representative of Snap-On and our firm or
the firm of Davis, Lindsey, Smith & Shonts, is that
correct?

A. Nothing directly.

Q. Nothing except through Mr. Alberts, is that correct?

A. Whatever may have transpired between the two of
you.

Q. Was between Mr. Alberts and ourselves, is that correct?

A. Yes.

Q. It is further alleged, in paragraph (30) of Snap-On's
Third Amended Petition, "that notwithstanding the fact that petitioner and its attorney had no knowledge that
the said testimony and evidence by and on behalf of Larson
was not the whole truth until so informed by respondent's
attorneys, the latter nevertheless continued its threats
of prosecution against petitioner, its attorney, Larson and
others; that said threats were repeated to a point that petitioner
was coerced to cooperate with Larson and Precision
Instrument Mfg. Co. and to subscribe to the respondent's,"
that is, Automotive's, "terms that were simultaneously
tendered in the form of the Exhibit 4 and 6 contracts;"

what is the basis of those allegations in the Third Amended Petition?

A. That again would have to be answered by counsel, because it is between counsel for both sides.

Q. Well, is it correct or true, that Snap-On and its attorney had no knowledge that the testimony and 333 evidence by and on behalf of Larson was not the whole truth until so informed by Automotive's attorneys?

A. We certainly did not know until so informed.

Q. Well, what did the telephone call from Mr. Alberts to you respecting the anonymous call mean?

A. Well, that was an anonymous call, pure and simple. I didn't take the call myself. It wasn't made to me.

Q. It didn't mean anything to you, then, is that correct?

A. Well, it hadn't— Do you put any stock in any anonymous calls?

Q. I am asking you whether or not that anonymous call, that Mr. Alberts referred to, meant anything to you, or whether you just ignored it?

A. I don't know. It probably came out of a clear sky. I don't know anything about it.

Q. Well, you did ignore it?

A. So far as I was concerned, yes. What Mr. Alberts did about it, you will have to check with him on.

Q. Did anything that I may have said to Mr. Alberts, in the conference that I had alone with him, have anything to do with knowledge that you or Mr. Alberts gained in the matter?

The Witness: Gee, I don't—it is a rather—

Mr. Fidler: I will put it this way—

The Witness: Put it plainly.

334 Mr. Fidler: Q. Did my conversation alone with Mr. Alberts mean anything to you or Mr. Alberts?

A. I don't know. I can't say what it meant to him, and I was not at the conference.

Q. Well, were you interested in finding out what was said at that conference?

A. I probably was, but I was away in Canada that week. I didn't see him until a week following.

Mr. Fidler: Mr. Freeman, is this a good place to stop for luncheon?

Mr. Freeman: Oh yes.

Mr. Fidler: I think it is a good place; and what time would you prefer to get back? It is about ten minutes to one o'clock now.

Mr. Freeman: How much longer are you going to be?

Mr. Fidler: Well, probably a half hour.

Mr. Freeman: Is that all?

The Witness: Why don't we go through with it, now, then?

Mr. Freeman: No. Let us have luncheon. You know we can chat with him during the luncheon hour, too. There is no harm with our eating with him, is there?

Mr. Lindsey: No.

Mr. Fidler: No.

Mr. Freeman: Make it two o'clock.

Mr. Fidler: That is all right.

335 Mr. Freeman: Is that all right with you fellows?

Mr. Fidler: That is O. K.

Mr. Freeman: All right.

And thereupon, at about 12:50 o'clock P. M., on Wednesday, April 14, 1943, a recess was taken until 2:00 o'clock P. M. of the same day, Wednesday, April 14, 1943.)

(The taking of the deposition of Joseph Johnson, called as a witness by the Automotive Maintenance Machinery Co., Plaintiff, was resumed at about 2:07 o'clock P. M., on Wednesday, April 14, 1943, following the recess as aforesaid, at Suite 1400, 135 South La Salle Street, Chicago, Illinois.)

336 JOSEPH JOHNSON, having been previously duly sworn, before the commencement of his testimony, resumed the witness chair, was examined and testified further, as follows, to-wit:

Examination (Continued) by Mr. Fidler.

Mr. Fidler hands copy of Third Amended Petition for Declaratory Decree to the witness.

Q. I again call your attention to that part of paragraph (30), of Snap-On's Third Amended Petition, which reads, "the latter", that is referring to Automotive's attorneys, "nevertheless continued its threats of prosecution against petitioner, its attorney, Larson and others."

What threats were made against Petitioner, that is, Snap-On.

A. I have a letter here that I would like to refer to, that may have some bearing on this. (Witness Johnson produces document.)

Q. What letter is that?

A. I am referring now to a letter dated December 19th, on the stationery of Davis, Lindsey, Smith & Shonts, and addressed to Mr. Harry C. Alberts of 38 South Dearborn Street, Chicago, Illinois, and copy of which you direct sent to my attention. I believe that is one of the threats referred to in the paragraph (30) just referred to by you.

Q. May I see the letter, please?

(Whereupon the witness, Mr. Johnson, handed said letter to Mr. Fidler.)

Q. Will you please point out in this letter, which you have just produced—rather, it is a copy of a letter—

Mr. Freeman: Well, it is an original letter signed by Harry W. Lindsey, so it is not a carbon. It is an original carbon.

Mr. Fidler (Continuing): Q. Point out in this letter the threats that you referred to, if any appear therein, as having been made against Snap-On?

The Witness: I did not draw up this Third Amended Petition for a Declaratory Decree.

Mr. Lindsey: Just answer the question, Mr. Johnson.

The Witness: Well, I am answering the question here.

Mr. Fidler: Q. The question is, please point out in this letter of December 19th, 1940, which you have just produced, any threats against Snap-On?

The Witness: I ask you to have our attorney point that out.

Mr. Fidler: Q. Well, can you do so?

A. I am not going to do it. I did not draw this Petition for Declaratory Decree. It was drawn by the attorney.

338 Mr. Freeman: Mr. Johnson, just take a look at this letter.

Mr. Lindsey: Just a minute, now. Let us ask the witness if they didn't produce that as being one of the threats.

Q. Didn't you produce this as being one of the threats?

Mr. Freeman: Let us not argue this case now, Mr. Lindsey.

Mr. Hibben: Who is arguing, Mr. Freeman?

Mr. Lindsey: Q. You produced it as being one of the threats, didn't you?

A. I said that no doubt when this was written, this was part of it.

Mr. Lindsey: Well, I think this evasion and innuendos around here ought to cease now.

Mr. Freeman: I thought they did cease when Mr. Johnson told Mr. Fidler that he was the one that made the accusation against Snap-On.

Mr. Lindsey: Now Mr. Freeman, let us get this on the record. Let us revert to yesterday.

Mr. Freeman: All right.

Mr. Lindsey: I did not catch an inference which you and Mr. Ooms apparently intended to make, about a certain original letter, that was in the discussion yesterday, and

I want to know now, on the record, whether you are 339 inferring that Mr. Fidler or I have the original of that letter?

Mr. Freeman: I thought the witness answered you, as to where the letter was.

Mr. Lindsey: It was you and Mr. Ooms that made some inferences. Now, were there any inferences there that we had the original of that letter?

Mr. Freeman: No. I don't know whether you have it or not.

Mr. Lindsey: Then, you did not mean to infer that we did have either you or Mr. Ooms?

Mr. Freeman: All I know is that you knew about that letter, before you had any meeting with Mr. Alberts, and prior to December 19th, 1940, you knew about the letter.

Mr. Lindsey: When I said I wanted the original letter, you said that we could produce it. Now, did you infer that I had that letter?

Mr. Freeman: No.

Mr. Lindsey: O. K.

Mr. Freeman: But I do want to state on the record that you knew about it, or that your office knew about it.

Mr. Fidler: Read the question, please.

(Pending question read by the Notary.)

A. I think that the best answer to that question 340 would be to consider it answered in Mr. Alberts' letter of the 49th, which answered this letter of Davis, Lindsey, Smith & Shonts, letter of the same day.

Mr. Lindsey: Ask him exactly where, in that letter, there was any threat against Snap-On.

Mr. Fidler: Q. I ask you again for you to state personally where in the letter of December 19th, 1940, there is any threat against Snap-On?

A. Well, I might start out here with this paragraph: "In the second place, we do not believe that you can divest yourself of all responsibility in this matter."

Q. You consider that as a threat?

A. No. This letter is directed to Harry C. Alberts. You are asking me a question here as to whether or not it is a direct threat to the Snap-On Tools Corporation. This letter is not directed to the Corporation, but to the attorney.

Q. But you produced that letter as one of the threats against Snap-On. Now, you retract that, is that correct?

A. I do not retract. I say I didn't write this, and he presumably used that in there. I am not an attorney; I don't draw these things. I don't know the legal phraseology.

Q. You have said that that letter contains threats—
341 a threat against Snap-On. Point out in that letter there where there is any threat against Snap-On?

Mr. Freeman: Are you distinguishing between Snap-On and its attorney, in that question?

Mr. Fidler: I will come to that, Mr. Freeman.

Mr. Freeman: No. The witness is entitled to know whether you are referring to Mr. Alberts and Snap-On indiscriminately as one and the same.

Mr. Fidler: I am referring to Snap-On Tools Corporation, one of the parties to this suit.

Mr. Freeman: As distinguished from Harry Alberts, its attorney?

Mr. Fidler: Yes.

A. My answer would, then, be that since this letter is not directed to us, that the threat has not been directly directed to the Corporation.

Q. Is there any threat in that letter of December 19th indirectly directed to the Corporation?

A. Since it all has to do with the case, there may be.

Q. Well, can you find any?

A. I don't know why I should be asked to make the analysis of it.

Q. Well, you produced it in answer to the question as to what threats were made against Snap-On.

A. I said this letter probably could have some bearing on it.

342 Mr. Freeman: Isn't the letter the best evidence?

The letter speaks for itself and he has produced it in answer to the question that he produce a document sub-

stantiating the allegation of the complaint. He has produced this letter.

Mr. Lindsey: If the witness says it is right, can't you cross-examine him and prove it is day?

Mr. Freeman: Well, this letter is still the best evidence.

Mr. Fidler: The witness has made a statement under oath, and he has produced the letter.

Mr. Lindsey: Have him answer the question.

Mr. Fidler: And I want the question answered.

The Witness: You better read that.

I think I have already answered it.

Mr. Lindsey: Restate the question again, Mr. Fidler.

Mr. Fidler: Q. Do you find in the letter of December 19th, 1940, that you produced, any threat against Snap-On as a company, one of the parties to this suit?

The Witness: What do you mean by threat here? Will you give me what you are driving at here, by "threat"?

Mr. Fidler: Q. I want you to use the term "threat" in the same sense that is used in the pleading, which reads,

"the latter nevertheless continued its threats of prosecution against petitioner,"—Now, does that letter of

December 19th, 1940 contain any threat against Snap-On?

(Witness Johnson examines said letter.)

A. I would say that by inference there is—You are questioning here, for example, the manner of the records in the case. You say we "employed the reporter. Part of the transcript is not reported correctly or fully. The reporter delayed in transcribing part of the record. You must recognize that a large part of the testimony taken on behalf of Snap-On and Larson is, to put it mildly, not the whole truth."

Q. Do you consider that a threat of prosecution?

A. Well, we are in the heart of prosecution and have been right along here. I don't know how else you could link it up.

Mr. Lindsey: You answer the question yes or no. What is the use of arguing?

Mr. Fidler: Q. Did you consider that, at the time that letter was written, a threat of prosecution?

A. I don't recall, but evidently our legal counsel has.

Q. Well, did you consider it a threat, at that time?

A. I did, yes.

Q. What other threats are there in that letter?

(The witness again examines the document.)

344 Mr. Freeman: Why don't you ask him what he ~~con-~~
~~sidered threats in the letter?~~

A. Here is another statement by you: "and I assure you that there are further developments to still be revealed. You and Mr. Johnson should—if you do not—realize that you are holding up the issuance of the Zimmerman Patent without the slightest justification."

Mr. Fidler: Q. Did you consider that, at the time you received that letter, as a threat of prosecution?

A. I would consider it in the tone in which the letter is written, yes.

Q. Do you find any other threats in that letter of December 19th, 1940?

A. You might take the next paragraph here:

"You cannot shift your responsibility to Mr. Hobbs. We and Automotive do not propose to permit either you or your client Snap-On to divest yourselves of responsibility. We simply refuse to permit Automotive to be the goat."

Q. Did you consider that a threat of prosecution, at the time you received the letter of December 19th, 1940?

A. No doubt I did.

Q. Well, did you?

A. I did.

Q. Any other threats in that letter of December, 345 1940, December 19th, 1940?

A. I don't think so.

Q. Are those all the threats, threats of prosecution that were made against Petitioner at the time of the Interference?

A. I would say the letter speaks for itself here, for any others.

Q. Is that all the threats that were made against Snap-On Tools Corporation, at that time?

A. I believe so.

Q. Now, paragraph (30) of Snap-On's Third Amended Petition, further states: "that said threats were repeated to a point that petitioner", that is, Snap-On, "was coerced to cooperate with Larson and Precision Instrument Mfg. Co." When were those threats repeated?

A. I do not know.

Q. Were they ever repeated to you?

A. Not to me, because I am not counsel in this case.

Q. Were they ever repeated to any other officer of Snap-On, that you know of?

A. Not that I know of.

Mr. Freeman: You use the word officer as distinguished from its counsel or lawyer?

Mr. Fidler: Yes. I use it in the ordinary sense in which you use it customarily.

346 Q. How was Snap-On coerced to cooperate with Larson and Precision?

The Witness: Is that a question for me to answer?

Mr. Fidler: That is right.

A. I do not know.

Q. How was Snap-On coerced to subscribe to Automotive's terms that were simultaneously tendered in the form of the agreements, Petitioner's Exhibits 4 and 6?

A. That would be for counsel to answer.

Q. You cannot answer that personally?

A. No, sir.

Q. You signed the contract, Petitioner's Exhibit 4, did you not?

A. Do you have the signed document here? If you have it in your files and it is signed, I signed it.

Mr. Fidler: I do not have the signed document, but I would like to ask counsel for Snap-On whether or not they do have it available?

Mr. Alberts: I think it is here. I saw it this morning.

Mr. Freeman: Are you talking about the agreement as between—

Mr. Fidler: —Automotive and Snap-On.

Mr. Freeman: You have an original copy. Why don't you produce yours?

347 Mr. Hibben: It is probably back at our office.

Mr. Lindsey: We will adjourn until tomorrow, if you want to do that.

Mr. Hibben: That is the one that is attached to the Petition as Exhibit 4.

(Mr. Alberts hands document to the witness.)

Mr. Fidler: Q. Your counsel has just handed you the original of the agreement in question. Now I ask you, did you sign that agreement?

A. Yes, I did.

Q. Now, why did you sign it?

A. I signed it upon advice of counsel.

Q. For no other reason?

A. We generally look to our counsel in matters of that kind.

Q. But did you have any reason for signing it?

A. This is the— What do you mean by reasons there, Mr. Fidler?

Q. Did you have any reason for signing the agreement, Petitioner's Exhibit 4?

A. Other than it is a settlement in a controversy.

Q. Were you coerced into signing that agreement, Petitioner's Exhibit 4?

A. No, sir.

Q. Was Snap-On Tools Corporation, the company, a party to this suit, coerced into signing that agreement, 348 Petitioner's Exhibit 4?

A. Not directly, no.

Q. How were they coerced indirectly?

A. I did not say that we were coerced indirectly.

Q. Then, they were not coerced into signing that agreement, is that correct?

A. I have already answered that.

Q. You said not indirectly. I asked you whether or not they were directly or indirectly coerced into signing the agreement, Petitioner's Exhibit 4?

A. When I said directly, I meant directly either by AMMCO or the firm of Davis, Lindsey, Smith & Shonts.

Q. Was Snap-On coerced by anybody other than those persons into signing the agreement, Petitioner's Exhibit 4?

A. No.

Q. Paragraph (30) of Snap-On's Third Amended Petition, further alleges that "respondent did thereafter suppress the evidence of said perjury and withheld making its information and complaint to the proper officers". What is the basis of that allegation?

The Witness: Where do you read that, Mr. Fidler, on what page? Where do you start this?

(Mr. Fidler indicates on page 22 of the Third Amended Petition for Declaratory Decree.)

The Witness: Will you read that question?

349 (Pending question read by the Notary.)

The Witness: I can't answer that one.

Mr. Fidler: Q. Were you familiar with this letter, Automotive's Exhibit 4 for identification, at the time it was written? (Mr. Fidler hands document to the witness.)

A. I believe I was with him when he dictated this letter, yes.

Q. What was the purpose of writing that letter to Mr. Larson?

A. I do not know.

Mr. Freeman: Will you wait about three minutes?

Mr. Lindsey: Yes.

(Whereupon a short intermission followed.)

Mr. Fidler: Q. You are the officer of Snap-On Tools Corporation, as distinguished from its Patent Attorney, who handles the patent matters for the Company, are you not?

A. No, I do not.

Q. Who handles that?

A. We have a young man by the name of Walter W. Daniel.

Q. Who, in 1938, handled the patent matters for Snap-On, aside from the patent attorney?

A. I may have handled them in part. At that time, he was an assistant to me, referring now to Mr. Daniel.

Q. And when did Mr. Daniel start handling the patent matters at Snap-On, now distinguishing as between him and the patent attorney that it retained otherwise?

350 A. In 1939. (Mr. Ooms now leaves the hearing room temporarily.)

Mr. Fidler: I would like to ask counsel for Snap-On to produce the original of the agreement of September 28th, 1938, which is attached to the Petition as Exhibit 5.

Mr. Alberts: Mr. Ooms must have that as an exhibit in the Interference. I produced them in the Interference.

Mr. Fidler: Here is a copy.

Mr. Freeman: Just tell me, is this a copy?

Mr. Fidler: Yes.

Mr. Freeman: That is O. K.

Mr. Fidler: Q. I hand you a copy of an agreement dated September 28, 1938, and which is Exhibit 5 attached to Snap-On's petition filed in this case, and ask you whether or not you, as vice president of Snap-On, executed or signed that agreement?

(Mr. Fidler hands document to the witness.)

A. Yes. It shows that I did.

Q. What was the purpose of entering into that agreement?

Mr. Freeman: I think the agreement is the best evidence as to its contents.

Mr. Fidler: I am asking the witness as to Snap-On's purpose of entering into the agreement.

Mr. Freeman: Well, whatever Snap-On's purpose was, it is all combined in the written document which is here being presented to you.

351 The Witness: Does that answer the question?

Mr. Freeman: I don't know. You can ask Mr. Fidler about it.

Mr. Fidler: I wish the witness to answer the question.

A. I would say that when we entered into this agreement, we entered into an agreement here with Kenneth R. Larson, who was formerly a mechanic, and who presented what looked like a pretty good development in a tension wrench, and that an agreement such as this would be customary practice with an individual who had not established himself.

(Witness Johnson hands copy of Petitioner's Exhibit 5 to Mr. Fidler.)

Mr. Fidler: Q. This agreement, which is Petitioner's Exhibit 5, provides:

"Larson agrees to permit Snap-On Tools Corporation to withhold one-fourth of the purchase price from each order as a defensive patent litigation fund to be used by Snap-On Tools Corporation in the event they are sued for patent infringement by virtue of their sale of torque wrenches they are supplied by Larson."

Why was that provision incorporated in that agreement?

Mr. Freeman: The agreement itself is self-explanatory and the reason for putting it in has been stated in 352 just what you read from the agreement. The agreement speaks for itself.

Mr. Fidler: I am asking the witness to state Snap-On's reason for including that provision in the agreement.

Mr. Freeman: That question is objected to, as asking for secondary evidence.

Mr. Fidler: I ask the witness to answer.

Mr. Freeman: Go ahead and answer.

The Witness: I have no objection to answering it here.

Mr. Freeman: Go ahead and answer it.

A. I don't know what the procedure is in a hearing of this kind. There is nothing at all in the question about it — because in dealing for any kind of an item, our purchase order form shows, where we are dealing with well established companies, that we are to be kept free and clear of all liability arising from patent infringement.

Now, in dealing with an individual, who is entering into a business here and who has no business standing, that

(Witness refers to Petitioner's Exhibit 5) is a customary practice on new developments.

Mr. Fidler: Q. Well, you don't do that with your regular customers, do you?

The Witness: Who do you refer to, by "regular customers"?

Mr. Fidler: Q. Your regular customers from whom you purchase equipment or to whom you sell equipment?

A. There is a difference there, because if we buy from the Stanley Rule & Level company, we know the company is a long-standing, established company, a company with a sound financial position, and they have accepted orders on the basis that an infringement suits will be undertaken by them.

Q. At the time you entered into this agreement, Petitioner's Exhibit 5, you were receiving wrenches from Automotive Maintenance Machinery Company and selling them, were you not?

A. At that date, I don't know whether or not the arrangement had been terminated with Automotive.

Q. When you entered into that agreement with Mr. Larson, did you not expect some difficulties to arise with respect to Automotive?

A. No, sir.

Q. I now show you an original agreement, which is Automotive's Exhibit 3 for identification, and ask you whether or not you signed that agreement?

A. I did.

Q. Now, this agreement, Automotive Exhibit 3 for identification, was to take the place of the agreement of September 28, 1938, Petitioner's Exhibit 5, was it not?

The Witness: Will you read that question?

(Pending question read by the Notary.)

A. I don't know what Exhibit 5 is. I would like to see the other document.

Mr. Fidler: This agreement about which I asked you a moment ago.

The Witness: He is asking whether this supersedes that (Witness indicates documents.)

(Colloquy off the record between Mr. Grover and the witness.)

A. I don't know that these two agreements are related here, Mr. Fidler, this agreement (indicating document) and this one (Witness indicates another document.).

Mr. Fidler: Q. Well, you entered into this agreement, Automotive Exhibit 3 for identification, in order to enable Precision Instrument Manufacturing Company to enter into an agreement with Automotive, did you not, in settlement of the Interference?

A. I believe that is the intent of this document.

Mr. Freeman: Referring to Exhibit 3 for identification.

Mr. Fidler: Q. Now, this agreement, Automotive Exhibit 3 for identification, provides for the payment of \$500.00; to Precision Instrument Manufacturing Company, as a part of the cost of the same, does it not?

355 Mr. Freeman: That is objected to, as asking for secondary evidence. The agreement speaks for itself, and it is the best evidence. You go ahead and answer.

Q. Well, if it is in the document, as this gentleman says, it does speak for itself.

Mr. Fidler: Q. Please read paragraph numbered 3 of the document, which is Automotive Exhibit 3 for identification, and state whether or not it is a fact that \$500.00 was advanced to Precision Instrument Manufacturing Company in entering into that agreement?

Mr. Freeman: That is objected to, for the same reason: The agreement speaks for itself, and you are calling for secondary evidence.

Mr. Lindsey: Ask him if \$500 was paid.

Mr. Fidler: Q. Isn't that correct?

Mr. Freeman: Are you following up with what Mr. Lindsey asked?

Mr. Fidler: No. I am asking my question.

Mr. Freeman: Will you please read the question. (Pending question read by the Notary.)

A: I personally didn't make the transaction and I think you would have to refer to the records of the Corporation for the answer on that.

Mr. Fidler: Q. Don't you know it is a fact, personally?

356 A. No, I don't.

Q. Wasn't \$500 paid to Precision Instrument Manufacturing Company, in connection with this agreement, Automotive Exhibit 3 for identification?

A. It probably was, although I didn't sign the check, or I don't recall seeing it.

Q. It also is a fact, is it not, that this agreement, Automotive Exhibit 3 for identification, was entered into in

order that Snap-On might enter into its agreement with Automotive, which agreement is Petitioner's Exhibit 4 in this case?

A. I would believe that it is an interlocking agreement, yes.

Q. And it was entered into, that is, the Automotive Exhibit 3 agreement, to enable Snap-On to enter into the agreement, Petitioner's Exhibit 4, isn't that correct?

The Witness: What is No. 4? I would like to see No. 4. (Mr. Fidler hands document to the witness.)

A. I believe so, yes.

Mr. Fidler: Q. Who paid for the prosecution of the Larson Application involved in Interference No. 77,565?

A. Larson has been paying his own way on a patent basis.

Q. At the time that the Application was filed back 357 in 1938, who paid for the preparation and filing of the Larson Application?

A. I am quite sure that Larson did.

Q. And who paid for the prosecution of that Application, at the time it was filed?

A. I am quite sure that Larson did.

Q. And who paid for the prosecution of the Interference No. 77,565?

A. The same answer.

Q. Paragraph (4) of Snap-On's Third Amended Petition alleges "that respondent is representing to customers of petitioner and prospective purchasers of petitioner's wrenches which include the agencies of the United States Government making purchases for the armed forces of the United States, that petitioner's aforesaid wrenches infringe the claims of said respondents", that is, Automotive's "letters patents". What customers of petitioner are alleged to have received such representations from Automotive?

A. I don't recall.

Q. Well, did you ever know?

A. No. I have heard some talk, but I don't know directly. That will probably come out in further testimony.

Mr. Lindsey: Ask him who would know about it.

358 Mr. Fidler: Q. Well, who would know about that?

A. Our attorney probably would know about it.

Q. That is, Mr. Harry C. Alberts?

A. I refer to Mr. Alberts.

Q. Who of Snap-On would know about that?

A. I believe our sales manager would know about that.

Q. And what is his name?

A. Mr. Rogers Palmer.

Q. Who are the prospective purchasers of Snap-On's wrenches to whom such alleged representations were made.

A. Well, under our method of marketing, it could be the individual garage mechanic, it could be the service station owner, it could be industrial plants.

Q. But you don't know who the prospective purchasers were?

A. I do not. No.

Q. It is stated that the "prospective purchasers" include the agencies of the United States Government making purchases for the armed forces of the United States. What agencies of the United States Government?

A. Well, that could be one of many agencies. It might be the Air Forces; it might be Lend Lease. It could be any number of other armed forces' agencies.

Q. Well, do you know?

A. I do not.

359 Q. It is further stated, in Snap-On's Third Amended Petition, in paragraph (5) thereof, "That no suit has been instituted by the respondent", that is, Automotive, "against petitioner," Snap-On, "charging infringement of the aforesaid letters patents, but upon information and belief respondent", that is, Automotive, "has made representations, wholly without foundation, to petitioner's customers and prospective customers, to the effect that a patent suit is pending between Automotive and Snap-On, and that a cease and desist order will soon be issued by the courts against Snap-On who no longer will be able to sell its aforesaid wrenches, which representations have interfered and are interfering with the lawful conduct of this petitioner", Snap-On, "and causing petitioner's," Snap-On's, "customers to delay, if not altogether stop, the purchase of the aforesaid wrenches". What customers of Snap-On are referred to there?

A. I do not know.

Q. What representations, the text of the representations, were made?

A. I do not know.

Q. What prospective customers of Snap-On are referred to there?

360 A. They probably would be the same as those stated in the previous answer.

Q. Who would know about these customers?

A. Our sales manager, Mr. Rogers Palmer.

(Mr. Ooms returned to the hearing room at this point in the taking of the deposition.)

Mr. Fidler: Q. Mr. Alberts, in a letter addressed to my attention and dated December 3rd, 1940, stated in the second paragraph of such letter, that: "The officials of Snap-On Tools Corporation who were given a complete report on the conflicting versions stated by Mr. Thomasma at your office, on the one hand; and the testimony presented by and in behalf of Larson, on the other hand, have authorized me to withdraw as counsel for Larson and the latter has been so advised as of November 28th, 1940." Will you please produce such report?

The Witness: Of that meeting that was held?

Mr. Fidler: No. The report, the complete report that Mr. Alberts gave you on the conflicting versions of the testimony, which is referred to in a letter by Mr. Alberts to me.

Mr. Freeman: Does that letter show whether the report was written or oral?

361 Mr. Fidler: It does not show.

Mr. Freeman: He has already testified as to an oral report. Why don't you just ask him whether there was any written report?

Mr. Fidler: Well, let the witness so state, if that is a fact?

The Witness: Well, I don't recall. I looked through the letters that I have here. I don't recall any written report referring to such.

Mr. Fidler: Q. Was there a report then made to you at a meeting, such a report?

A. I testified earlier this morning that Mr. Alberts met with us at the plant.

Mr. Fidler: I suggest that we take a fifteen-minute recess, and if you have produced any papers in response to the request of my letter—

Mr. Freeman: You say we haven't produced any?

Mr. Fidler: I say if there are any.

Mr. Freeman: We have barrels full, brother, we have them all—

Mr. Fidler: May I take that time to look them over?

Mr. Freeman: You bet you can.

Mr. Fidler: And I may or may not have some additional questions.

(Whereupon a recess was taken.)

362. Mr. Lindsey: We will keep this file in the same order, and we would like to have one of the representatives for Precision or Snap-On present while we go over it.

Mr. Freeman: This happens to be Snap-On's party.

Mr. Lindsey: Snap-On, then.

Mr. Freeman: At the request of Automotive.

(Mr. Alberts remained in the hearing room while Mr. Fidler, Mr. Lindsey and Mr. Hibben examined files of papers produced by counsel for Snap-On Tools Corporation.)

Mr. Freeman: Are you through with these (indicating file of papers)? You don't want any of these?

Mr. Hibben: No. They are all in order, by the way.

Mr. Freeman: All right.

Mr. Hibben: And none in this one (Mr. Hibben hands another file of papers to Mr. Freeman.)

Mr. Freeman: We brought them all down (Referring to files of papers.)

(Mr. Fidler, Mr. Lindsey and Mr. Hibben continue the examination of files of papers produced by counsel for Snap-On Tools Corporation.)

Mr. Fidler: Where are those other files that you 363. took back from me?

Mr. Grover: They are here. (Mr. Grover produces files of papers.)

Mr. Freeman: Don't give him any of those that you kept out.

Mr. Grover: No.

Mr. Fidler: Did we have that?

Mr. Grover: Yes. Here you are, and you saw this one.

Mr. Fidler: Yes.

On April 7, 1943, counsel for Automotive wrote to counsel for Snap-On, asking that certain correspondence and papers be produced at the time that Mr. Johnson was produced for the purpose of his testimony.

Counsel for Snap-On have produced several files, and I note that some of these files relate to correspondence passing between Automotive and Snap-On. We are not interested at this time in these files, and merely turned through them rapidly, to determine whether or not they were correspondence which we had sought. The correspondence in these Automotive-Snap-On files was not read.

364. Of the other files or papers in the other files produced, we wish to have the reporter mark, for identification.

tification, a yellow copy of letter dated November 11th, 1940, purporting to be from W. W. Daniel to Precision Instrument Manufacturing Company of Des Plaines, Illinois, this to be marked for purposes of identification as Automotive Exhibit No. 7.

Mr. Freeman: We can remove it.

Mr. Ooms: What year was that?

Mr. Hibbert: 1940.

(Said document was thereupon marked by the Notary as Automotive Exhibit No. 7, for identification.)

Mr. Fidler: This letter marked as Automotive Exhibit No. 7 for identification has been taken from the file marked #11484 entitled Zimmerman vs Larson. Shall we put in photostatic copies?

Mr. Freeman: Yes. That will be all right. We will agree with you on that.

Mr. Fidler: I should also like the reporter to mark for purposes of identification, as Automotive Exhibit 8, the original of a letter dated October 18, 1938, from Mr. Harry C. Alberts to Snap-On Tools Corporation, Attention 365 of Mr. Joseph Johnson, which letter is being taken from a file marked number 11354, entitled Torque Wrench.

(Said document was thereupon marked by the Notary as Automotive Exhibit No. 8, for identification.)

Mr. Fidler: I also wish the reporter to mark, for purposes of identification, as Automotive Exhibit 8-A, a copy of an affidavit which accompanied the letter, Automotive Exhibit No. 8 for identification, which copy of affidavit is unsigned, but the affiant is indicated to be Kenneth R. Larson.

(Said document was thereupon marked by the Notary as Automotive Exhibit 8-A, for identification.)

Mr. Fidler: I also wish the reporter to mark, for purposes of identification, as Automotive Exhibit 9, a so-called invention record dated August 29th, 1939, in the name of George M. Walraven, which record is being taken from file number 11354 entitled Torque Wrench.

(Said document was thereupon marked by the Notary as Automotive Exhibit No. 9, for identification.)

366 Mr. Freeman: That was taken out of the same file, wasn't it?

Mr. Fidler: Yes.

Mr. Freeman: Is that all now?

Mr. Fidler: Yes.

I also wish the reporter to mark, for purposes of identification, as Automotive Exhibit No. 10, the original of a letter from Mr. Harry G. Alberts to Snap-On Tools Corporation, Attention Mr. Joseph Johnson and dated December 19th, 1940, which letter was not contained in any file handed to me, but accompanied some other loosely arranged letters or copies of letters.

(Said document was thereupon marked by the Notary, at the request of Mr. Fidler, as Automotive Exhibit No. 10, for identification.)

Mr. Fidler: I have no further questions of the witness.

367

STIPULATION.

Mr. Freeman: It is stipulated by and between counsel for the respective parties, that the exhibits identified by Automotive during the taking of the testimony of Walter Carlsen and Joseph Johnson shall be retained by counsel for Snap-On and he shall make photostatic copies, and thereafter photostatic copies shall be offered in evidence in lieu of the originals.

Mr. Fidler: That is all right.

Mr. Freeman: (Continuing.) With the same force and effect as though the originals had been offered.

Mr. Lindsey: For identification.

Mr. Fidler: Instead of "offered in evidence", offered for identification.

These depositions will be signed.

Mr. Freeman: The witnesses may sign them without the presence of the Notary.

Joseph Johnson,
Signature of Witness to his foregoing deposition.

369 And afterwards, to wit, on the 9th day of August, 1943, there was filed in the Clerk's office of said Court a certain Report of Proceedings, portions of which are in words and figures following, to wit:

370 Report of Proceedings at Trial, in the above-entitled cause, before Honorable Michael L. Igée, one of the Judges of said Court, commencing on Monday, May 10, A. D. 1943.

Present:

Messrs. Davis, Lindsey, Smith & Shonts, By: Harry W. Lindsey, Jr., Esq., Raymond E. Fidler, Esq., and George N. Hibben, Esq., and Messrs. Fyffe & Clarke, By: A. J. Smith, Esq., on behalf of Automotive Maintenance Machinery Co.;

Casper W. Ooms, Esq., on behalf of Precision Instrument Manufacturing Company and Kenneth R. Larson;

371 Messrs. Bair & Freeman, By: Will Freeman, Esq., on behalf of Snap-On Tools Corporation.

Also present:

Harry C. Alberts, Esq.

386 The two agreements which Mr. Lindsey has just referred to, I would like to put into evidence as Defendants' Exhibit 4, the agreement between Automotive and Precision and Larson; and, as Defendants' Exhibit 5, the agreement between Automotive and Snap-On Tools Corporation, both dated December 20, 1940.

The Court: I take it you have no objection to that?

Mr. Lindsey: No, no objection, may your Honor please. Copies are attached, of course, to the pleadings and are admitted to the pleadings. So I see no real necessity of offering them, though I have no objection.

The Court: All right, they may be received.

(Said agreements, so offered and received in evidence, were marked respectively DEFENDANTS' EXHIBITS 4 and 5.)

Mr. Ooms: For purposes of further identification: Defendants' Exhibit 4 is the Exhibit 1 attached to the Complaint in this case, and Defendants' Exhibit 5 is the Exhibit 4 attached to the Petition for Declaratory Judgment.

I would like at this time to offer into evidence, because

they will be repeatedly referred to by the witnesses, three wrenches, merely as typifying the general classes that are

here involved: As Defendants' Exhibit 1, a wrench 387 made by Automotive Maintenance Machinery Company and sold by it to Snap-On and by Snap-On to the trade.

Mr. Lindsey: I suggest you just offer them and we can inspect them later, if there is any question about them, if your Honor please. I am not personally familiar with all of them.

The Court: They may be admitted subject to your later inspection of them.

Mr. Lindsey: That is right. We will save a little time.

(Said wrench, so offered and received in evidence, was marked DEFENDANTS' EXHIBIT 1.)

Mr. Ooms: As Defendants' Exhibit 2, the wrench made by Precision Instrument Manufacturing Company in 1939 and 1940, and constituting the subject matter of the Larson patent application which was in Interference.

The Court: It may be received.

(Said wrench, so offered and received in evidence, was marked DEFENDANTS' EXHIBIT 2.)

Mr. Ooms: As Defendants' Exhibit No. 3, the present wrench which is being made by Precision Instrument Manufacturing Company and sold to Snap-On Tools Corporation and which is the accused wrench in the infringement case.

Mr. Lindsey: I will object to the last one because it has nothing to do with the issues before your Honor. That 388 was placed on the market, of course, after all this alleged perjury and compounding perjury. It has nothing to do with the issues now before your Honor.

Mr. Ooms: I am not going to trouble about the structure or anything else. Your Honor raised a question this morning about how this entire issue arises, and to the extent it may be useful to refer to one of these, without going ahead and describing everything, I think it ought to be permitted to go in.

The Court: For that purpose, it may be.

(Said wrench, so offered and received in evidence, was marked DEFENDANTS' EXHIBIT 3.)

Mr. Ooms: As Defendants' Exhibit 6, I offer the certificate of Edward J. Hughes; that Esther Meltzer was commissioned a notary public on July 15, 1940 for a term

of four years. She is the stenographer before whom the Interference Depositions were taken.

The Court: Can't you folks agree upon that?

Mr. Lindsey: We are willing to concede that. If they will submit anything of that sort, we will agree to it. We are not questioning that fact at all, may your Honor please.

The Court: All right. It may be received.

(Said certificate, so offered and received in evidence, was marked DEFENDANTS' EXHIBIT 6.)

389 Mr. Ooms: As Defendants' Exhibit 7, I would like to offer into evidence a board containing five patterns which were in evidence in that form in the Interference.

Mr. Lindsey: No objection.

The Court: It may be received.

(Said board of five wood patterns, so offered and received in evidence, was marked as DEFENDANTS' EXHIBIT 7.)

Mr. Ooms: As Defendants' Exhibit 8, a board upon which are mounted a number of torque wrenches and parts which were in evidence in the Interference in that form.

Mr. Lindsey: No objection.

The Court: It may be received.

(Said board of wrenches and parts, so offered and received in evidence, was marked as Defendants' Exhibit 8.)

Mr. Ooms: As Defendants' Exhibit 9, the drawing which was in evidence in the Interference as Larson's Exhibit 27.

Mr. Lindsey: No objection.

The Court: It may be received in evidence.

(Said drawing, so offered and received in evidence, was marked as DEFENDANTS' EXHIBIT 9.)

Mr. Ooms: Kenneth R. Larson, will you take the stand?

KENNETH R. LARSON, one of the defendants herein, called as a witness on behalf of the Defendants; having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Ooms.

Q: Please state your name.

A: Kenneth R. Larson.

Q: Where do you live?

A: 1206 Center Street in Des Plaines, Illinois.

Q. How old are you, Mr. Larson?

A. Thirty-seven.

Q. What is your occupation?

A. I work for the Precision Instrument Manufacturing Company and design tools for them.

Q. Do you hold an office with that company?

A. Yes, I am president of that company.

Q. That is the Precision Instrument Manufacturing Company which is defendant in this suit?

A. That is right.

Q. And you are the Kenneth R. Larson who is a defendant in this suit?

A. That is right.

Q. The Precision Instrument Manufacturing Company makes torque wrenches, is that correct?

A. Yes, sir.

Q. How long have you made those?

391 A. Since the fall of 1938.

Q. And you are making torque wrenches today?

A. That is right.

Q. And to whom do you sell these torque wrenches?

A. Snap-On Tools Company.

Q. That is the Snap-On Tools Corporation, Inc., which is a defendant here?

A. That is right.

Q. When did you first have to do with torque wrenches in any way at all, Mr. Larson?

A. In the year 1937. 1936 is when I had the first one I bought from a company, the Cedar Rapids Engineering Company.

Q. That was known as the Kwik-Way wrench?

A. That is right.

Q. And that is your earliest experience with them?

A. Yes, sir.

Q. When did you first have to do with the designing and manufacture of a torque wrench?

A. During 1937.

Q. Are you the Kenneth R. Larson who was a party to the Interference No. 77565 in the United States Patent Office?

A. That is right.

Q. You testified in that Interference in October and
392 November 1940?

A. I did.

Q. Before Esther Meltzer, a notary public?

A. Yes.

Mr. Ooms: I would like to have this volume of Interference testimony, which is labelled "Deposition of Kenneth R. Larson," marked as Defendants' Exhibit 10.

Mr. Lindsey: No objection, may your Honor please, if it is understood this does not include all the testimony Mr. Larson gave in the Interference. Is that correct?

Mr. Ooms: I was about to add that, but it consists of pages 1 to 203, inclusive, and is all, as I understand it, that has been transcribed by the Court Reporter, Thomas R. Raftery. This happens to be the original typewritten copy.

The Court: It may be received in evidence.

(Said transcript, so offered and received in evidence, was marked DEFENDANTS' EXHIBIT 10.)

Mr. Ooms: Q. I call your attention, Mr. Larson, to testimony appearing on page 119 of the transcript, Defendants' Exhibit 10, where you were asked:

"Q. 809. And that was the time that Exhibit 9"—referring to Exhibit 9 on this panel, Defendants' Exhibit 8—

"—came into being in its infantile state?

"A. August of 1934 or September—August of 1934."

393. Did you so testify in that Interference?

A. I did.

Q. Was that true or not?

A. No, that wasn't true.

Q. On page 125 of that transcript you were asked:

"Q. 848 (And following.) Now, when were those wrenches completed, with Exhibits 38, 39, 40, 41 and 42, which comprise these exhibits here on this board"—now marked Defendants' Exhibit 8, and you answered:

"A. In this eleven and twelve case?

"Q. 849. Yes."

"A. That was in 1934 and the early part of 1935."

Did you so testify?

A. Yes, I did.

Q. Was that true or not?

A. No, it wasn't.

Q. On that same page, Defendants' Exhibit 10, you were asked:

"Q. 850. What is Exhibit 28 on that board?"—You answered:

"A. That was the final design I decided upon after experimenting with the others.

394 "Q. 851. When did you complete that?

"A. During 1935.

"Q. 852. In which wrench did you place that?

"A. No. 13.

"Q. 853. And when was that completed?

"A. I believe during the summer of 1935."

Did you so testify in that Interference?

A. Yes, I did.

Q. Was that the truth or not?

A. No, sir.

Q. On page 129 of the same transcript, Defendants' Exhibit No. 10, appears this passage:

"Q. 885. Now, what else was done with Exhibit 15?"

That refers to Exhibit 15 which appears on the board Defendants' Exhibit 8.

"A. This particular tool was sold in the fall of 1936 to Mr. Barggren and then it had a paper dial on it, and when he returned it I drilled these holes in there. Outside of that, that is the only change that has been made in it."

Did you so testify?

A. Yes, I did.

Q. Was that the truth?

A. No, sir.

Q. On page 82 of that transcript you were asked, 395 with respect to the drawing which is here marked Defendants' Exhibit 9, the following:

"Q. 540. Now, did you at any time make a sketch or drawing of the wrench parts?

"A. Yes, I did.

"Q. 541. When did that take place?

"A. I didn't make the drawing myself. It was drawn for me.

"Q. 542. By whom?

"A. By a high-school student in Des Plaines.

"Q. 543. Do you know who he was?

"A. I don't recall his name exactly, no. I could produce him if I had to, I think.

"Q. 544. You don't remember his name at this time?

"A. No, I don't.

"Q. 545. When do you recall he made that sketch for you?

"A. It was during May, 1936.

Q. 546. How do you fix that date?

A. It was just before Decoration Day.

Q. 547. How do you fix the year?

A. Well, it was the same year that I had started the parts house of my own.

Did you so testify?

396 A. Yes, I did.

Q. Was that the truth?

A. No, sir.

Q. When were the wrenches which you referred to in those extracts from the testimony which I have just read actually made?

A. In the fall of 1937 and during 1938.

Q. And when was the drawing which is here in evidence as Defendants' Exhibit 9 actually made?

A. During 1938.

Q. And who made it?

A. George B. Thomasma.

Q. Who was George B. Thomasma?

A. A man whom I had gotten acquainted with through another party in Des Plaines there.

Q. What was his occupation?

A. He was working for the Automotive Maintenance Machinery Company in North Chicago, assembling crank pin tools at the time, he told me.

Q. And how did you first meet?

A. I believe the first time I met him was in 1932, when he delivered to a place I was working for some equipment.

Q. You weren't interested in torque wrenches at that time?

A. No, sir.

Q. When did you and he get an interest in torque wrenches?

A. During 1938.

397 Q. Did he have any connection with your enterprise that was later formed into Precision Instrument Manufacturing Company?

A. Yes, he did.

Q. Did he work with you on the development of the wrench you first made?

A. He did, yes.

Q. Did you know that he was working for Automotive Maintenance Machinery Company at that time?

A. Yes, I knew that.

Q. Was there any discussion with him about that?

A. Yes: He said that would have no hearing on the case at all, that he simply worked there, he didn't have any contract signed with them of any kind.

Q. Do you know what work he did there at Automotive?

A. No, I don't definitely.

Q. Did you ever discuss with anybody else as to his connection with your company and with Automotive?

A. No, I didn't.

Q. Did you make any effort to conceal his connection with your company?

A. After we had started doing business with the Snap-On Tools, yes.

Q. I would like to have you review for us briefly, Mr. Larson, how you happened to begin making wrenches for Snap-On Tools Corporation. Will you tell us that briefly?

A. Well, after we had made the first tool and it worked fairly satisfactorily, we discussed whom we would get to sell it, and I had been in the automotive parts business and knew that it was very poor policy to try to sell it through any source of any kind, and that tool sales companies or tool manufacturers would be the best logical outlet.

Q. You said "we did this". Whom do you refer to?

A. Thomasma and I talked it over, but I did all the contact work and all the—nearly all the work all the way through, as far as that is concerned.

Q. How did you meet the Snap-On Tools Corporation?

A. I drove up one day and talked to one of their men in their organization.

Q. Did you know them?

A. No, not before that, no, sir.

Q. How did you know that they existed or might be a possible outlet for your company's product?

A. I had bought tools from them, from their salesman, in the past, and knew they had salesmen traveling around from garage to garage to sell their tools.

Q. And when you went up there the first time were you alone or did someone accompany you?

A. I was alone.

399 Q. Whom did you see at Snap-On Tools Corporation?

A. A man by the name of Allen G. Howes, I believe.

Q. Did you see anybody else since that trip?

A. Oh, yes, but I don't recall the names.

Q. Do you recall approximately when that was?

A. That was in May of 1938.

Q. And tell us briefly what happened from there on with respect to your business relationships with Snap-On?

A. Well, I was trying to interest them in selling my tool because I considered it was superior to any other made, and it wasn't until in the winter of 1938 that anything definite was done.

Q. And what was done at that time?

A. During the fall there was a patent application filled out for the tool, and in November or December I received an order for 500 tools to be delivered to them.

Q. From Snap-On Tools Corporation?

A. That is right.

Q. Who prepared the patent application?

A. Mr. Alberts.

Q. Was he your attorney?

A. No, he was Snap-On Tools' Patent Attorney.

Q. How did it happen he was preparing this Patent Application?

400 A. I didn't have any money to pay for the patent with, and they agreed to finance the patent for exclusive sales rights on the tool.

Q. Who was to finance your business of making these tools?

A. I had to do that myself.

Q. And you had some understanding with them in the fall of 1938 that you would make the tools and turn your patent over to them? I hand you a document dated September 28, 1938 and attached to the petition in this case as Exhibit 5, entitled "Preliminary Understanding, Kenneth R. Larson and Snap-On Tools Corporation." Will you tell us what that is?

A. That was the Preliminary Understanding or the beginning of the contract made out between myself and Snap-On Tools.

Q. And when was that made out or entered into?

A. September 28, 1938.

Q. Was it pursuant to that agreement that the Patent Application was prepared and filed?

A. Yes, it was.

Q. And as I understand it, as I understand this agreement, you gave them an exclusive license to sell the wrench which you were to make?

A. That is right.

Q. And there were certain provisions in here as to 401 what price would be charged, and if certain circumstances arose where you couldn't deliver. Snap-On Tools could make those over?

A. That is right.

Mr. Ooms: I will ask to have that Exhibit marked Defendants' Exhibit 61.

(Said document was thereupon marked as Defendants' Exhibit 61, for identification.)

Mr. Ooms: I might say, your Honor, that in the taking of the pre-trial depositions we referred to a large number of Exhibits, and if there is no objection I would like to retain that numbering for convenience.

The Court: It is perfectly all right, so far as I am concerned.

Mr. Ljndsey: No objection.

The Court: It may be received in evidence.

(Said document, so offered and received in evidence, was marked DEFENDANTS' EXHIBIT NO. 61.)

Mr. Ooms: Q. And the Patent Application that you have referred to as having been made out in October, 1938 is the Patent Application that was subsequently in the Interference we have talked about?

A. That is right.

Q. When did you undertake to make torque 402 wrenches under your understanding with Snap-On Tools Corporation?

A. We formed a corporation—George B. Thomasma, Mr. Carlsen and myself, formed a corporation in December of 1938 to start manufacturing torque wrenches.

Q. And that is the Precision Instrument Manufacturing Company?

A. That is right.

Q. Now, sometime later, your Patent Application was thrown into Interference with one of Mr. Zimmerman, was it not?

A. That is right.

Q. And it was in that Interference that you gave the testimony to which we have just referred?

A. Yes, sir.

Q. Do you recall about when that was?

A. It was during the summer of 1940.

Q. When the testimony was taken?

A. No; that was during the fall. I thought you said when the Interference had been declared.

Q. And in the course of that Interference you were called upon to execute a Preliminary Statement—

A. Yes, sir.

Q. —setting forth certain dates in which you allege you had had the first conception and made the first drawing and had first disclosed your invention to others.

403 Q. Do you recall that?

A. Yes, I remember.

Q. You made and executed such a statement?

A. Yes, I did.

Q. Where did you get the dates that you put into that instrument?

A. George B. Thomasina, most of them.

Q. At that time was he still connected with the Automotive Maintenance Machinery Company?

A. Yes, he was.

Q. That Preliminary Statement was executed under oath?

A. Yes, it was.

Q. Did you discuss with your attorney the dates that appear in that preliminary statement?

A. Yes; I told him that that is what the dates were.

Q. Did you have any proof of what the dates were at that time?

A. No, I didn't.

Q. And do you recall that when this testimony was taken you were called upon to testify about those dates?

A. Yes, I was.

Q. That testimony was taken before a reporter by the name of Thomas L. Raftery?

A. Yes, sir.

404 Q. And you were sworn by a notary public, Miss Esther Meltzer?

A. That is correct.

Q. Where was that testimony taken?

A. In Mr. Alberts' office.

Q. Do you recall anything that occurred shortly after that testimony was closed in November, 1940 with respect to that testimony?

I call your attention, Mr. Larson, to a letter on the letterhead of Harry C. Alberts, dated November 11, 1940, which I have had marked Defendants' Exhibit 62.

A. Yes, I remember this letter.

Q. Do you recall the circumstances of your receipt of that letter?

A. Yes.

Mr. Ooms: I would like to read that letter at this time, your Honor, and unless there is some objection here, wherever we read these documents, I think if the transcript merely shows that a certain exhibit was read, it will save encumbering the record with as many pages of typewriting as we can avoid.

Mr. Lindsey: No objection.

(Thereupon, Mr. Ooms read Defendants' Exhibit 62, for identification.)

405 Mr. Ooms: Q. What did you do when you received that letter?

A. I called Mr. Alberts and told him I thought that was this man Krichiver trying to make trouble in our corporation rather than anything else. I told him nothing at all about Thomasma's connection with the company, fearing that he would terminate our contract with Snap-On Tools.

Q. Had you ever told Snap-On Tools anything about Thomasma?

A. No, I never had.

Q. Had they asked you anything about possible connections between people in your employ and Automotive's employ?

A. Yes, they had.

Q. What had you told them?

A. I told them there was no connection.

Q. You told them you were the independent inventor of this wrench?

A. That is right.

Q. When you received this letter did you get into touch with Thomasma?

A. I don't recall whether it was this letter or another one, that we did get in touch with him, yes.

Q. And do you recall what was said or done on that occasion?

A. I asked him if his attorney had been in touch with

Automotive's attorneys and he said Krichiver wasn't
406 his attorney; that he didn't even know the man and
he had no connection with him whatever.

Q. Had you ever met attorney Krichiver?

A. Yes, I had.

Q. In what connection?

A. He attempted to cause us considerable trouble in
our corporation by insisting that we give Mr. Thomasma
a job at a salary far beyond his earning capacity.

Q. When was that?

A. During the summer of 1939.

Q. He became a stockholder in your company sometime
in that year, did he not?

A. Yes.

Q. And he held five shares of stock?

A. Yes, that is right.

Q. Now, at the time you talked to Thomasma about
this letter, you say it may have been some other letter,
was there any discussion as to any information having
been conveyed to the other side?

A. We simply asked him about it, and he said there
hadn't been, that he had nothing to do with them at all.

Q. Was he working for you at that time?

A. No, he wasn't.

Q. Did he ever work for Precision Instrument Com-
pany?

A. He was paid money, but he never worked for us.

407 Q. He was never in there from day to day as an
employee?

A. No, sir.

Q. Was he ever on a salary?

A. No, sir.

Q. He held a large number of shares of stock?

A. Yes.

Q. How many?

A. 260.

Q. For what was he given that stock?

A. For some tools that he furnished, and the prelimi-
nary work that was done on the tool in developing it.

Q. What tools had he furnished?

A. Oh, he had paid one payment, I think, on a lathe
that we bought, ten dollars, and he furnished some drills
and the remainder in small tools that he had at his home,
he said.

Q. And you gave him, or the company gave him 260 shares of stock, is that right?

A. That, and the work he put in. He put in considerable time. He put in a considerable number of hours on the tool while we were making it.

Q. In the commercial manufacture or in the development?

A. In developing of it.

Q. How many shares of stock in the company did you get?

408 A. The same amount.

Q. 260 shares?

A. Yes.

Q. What was that for?

A. For the same thing, also a great deal of money that I had spent on it.

Q. Spent on what?

A. On developing of the tool.

Q. After that letter of November 11th, Defendants' Exhibit No. 62, what was the next thing that occurred in connection with this Interference?

A. I believe shortly after that Mr. Alberts calls us down to his office and told us he had proof that we had testified falsely.

Q. Do you recall when that was?

A. I don't remember the exact date, no.

Q. Was it shortly after the testimony had been given?

A. A short time afterwards, yes.

Q. Tell us who was at his office at that time, what time of the day you got there, and just what occurred.

A. It was shortly after noon, and Mr. Carlsen and myself went to his office, and he was there with Mr. Johnson, the president of Snap-On Tools, and he told us then what had been told to him at Mr. Fidler's office, and he said that Mr. Thomasma was in and had identified the
409 drawing and proven to them that he had made the drawing, that if there had been any false testimony he wanted to know it because if there was, why, he didn't want to represent us any longer.

Q. Did he tell you anything in detail as to what occurred at that meeting? Just tell us everything you can that you remember of that meeting.

A. Well, there might be other things I don't recall right now.

Q. How long a meeting did you have that afternoon with Mr. Alberts and Mr. Johnson and Mr. Carlsen?

A. About thirty minutes, I would say.

Q. And who did the talking?

A. Mr. Alberts did most of it.

Q. And what did you say when he reported what he had learned that morning at the office of Mr. Fidler?

A. I didn't know that Mr. Thomasma had done what he had until then, and I was still under the impression that he was to not say anything, which he had said he would right along, and then I had to admit that he had made the drawing.

Q. You did admit that to Mr. Alberts that afternoon?

A. I did, yes.

Q. What else occurred at that meeting?

A. He told me he would have to stop representing us as attorney, that we would have to get another attorney.

410 Q. And did you do anything about getting another attorney?

A. Yes, we did.

Q. What did you do?

A. We asked him if he had any suggestions as to whom we should get, and he said he would give us a list of attorneys and we could pick one out, and we did that.

Q. Was that meeting friendly or was it heated?

A. Well, it wasn't exactly friendly.

Q. Did Mr. Johnson say anything?

A. As I recall it, he had very little to say.

Q. And what did you do when you left that meeting at Mr. Alberts' office on that day?

A. Either the same afternoon or the next day we went to see another attorney.

Q. Whom did you see?

A. Mr. M. K. Hobbs.

Q. And what did you do with him? Tell us what happened when you got to his office, what was said and done.

A. Mr. Carlsen and I went to his office and we told him the predicament we were in, and Mr. Alberts had said—he told us the various types of attorneys we could get. We could get one to try to scare the other attorneys, or get one that would probably be more friendly with them, and suggested Mr. Hobbs might be more friendly than
411 some of the others, and it was kind of a delicate matter and it should be handled as gently as possible, and

not—we were really in a spot that we couldn't back out of, and we talked it over and decided Mr. Hobbs would be the man for the job.

Q. You say "we talked it over." Who talked it over?

A. Mr. Carlsen and I.

Q. And what did you tell Mr. Hobbs when you got to his office?

A. We told him exactly what had happened.

Q. Happened where?

A. In this testimony. We didn't relate the entire testimony, but we told him that there had been some false testimony given, that we wanted an attorney that would try to settle it and as peacefully as possible. We didn't want to be turned over to the District Attorney for it. And he said he thought surely something could be done, and we told him if he needed any of the facts of the case he could call Mr. Alberts and he could tell him, and while we were in his office he called him.

Q. And there was a discussion of some kind between Mr. Hobbs and Alberts?

A. That is right.

Q. Did anything else occur at that meeting with Mr. Hobbs?

A. Only that he said that he would send us a bill 412 or we would have to give him a retainer's fee, if he decided to take the case after talking to Mr. Alberts.

Q. Did you subsequently get a bill from him?

A. Yes, we did.

Q. When did you next meet him?

A. I don't recall exactly.

Q. You had some correspondence with Mr. Hobbs after that, did you not?

A. From him, yes.

Q. You didn't write any letters to him?

A. I doubt that we did. We might have one or two, but I doubt that we wrote any.

Q. Do you have a stenographer in your office?

A. No, we do not.

Q. Have you ever had one?

A. No, sir.

Q. How do you transact your business?

A. By longhand letter, up until just in the last few days.

Mr. Ooms: I would like to have the stenographer mark

as Defendants' Exhibit 63 a letter of December 4, 1940 from Mr. Hobbs to Precision Instrument Manufacturing Company; as Defendants' Exhibit 64, an accompanying draft of a letter proposed to be sent to Mr. Fidler, dated December 4, 1940; as Defendants' Exhibit 65, a statement of the firm of Haight, Goldstein & Hobbs, "To Retainer for Professional Services Re Settlement of Larsen-Zimmerman Interference, Charges to be credited against the retainer, \$250.00."

(Said letter of December 4, 1940, proposed letter of December 8, 1940 and statement of Haight, Goldstein and Hobbs, were thereupon respectively marked as Defendants' Exhibits Nos. 63, 64 and 65, for identification.)

Mr. Ooms: Q. I show you, Mr. Larson, Defendants' Exhibits 63, 64 and 65, and ask you what those are?

A. 63 reviews a conference we had had that morning or—no, a conference they had had with Mr. Fidler.

Q. That is a letter from Mr. Hobbs to you, is it?

A. That is right.

Q. And Defendants' Exhibit No. 64 is what?

A. Well, it is a proposition made to Mr. Fidler on a settlement.

Q. Where did you get that copy?

A. It was sent to me by Mr. Hobbs.

Q. And Defendants' Exhibit No. 65 is Mr. Hobbs' bill?

A. That is right, yes.

Q. And that bill was paid on December 6, 1940?

A. That is right.

Mr. Ooms: I would like to read into the record at this time, without receiving them, Defendants' Exhibits 63 and 64.

414 I am assuming that this won't be too tedious to your Honor, reading these documents, but I think it is the quickest way of getting a picture of the case.

The Court: Go ahead.

(Thereupon, Mr. Ooms read Defendants' 63 and 64, for identification.)

Mr. Ooms: Defendants' Exhibit 64 is unsigned and apparently was not sent.

Q. The letter, Defendants' Exhibit No. 63, Mr. Larson, refers to a conference had with Mr. Hobbs that morning, December 4, 1940. Do you recall that conference?

A. Yes, I believe that was the second time we were in his office.

Q. And who was there?

A. Mr. Carlsen and myself, and possibly one other man who I believe was Mr. Haight.

Q. You don't know who it was?

A. I am quite sure that was who I was introduced to.

Q. A young man?

A. Yes, a young man.

Q. In his thirties?

A. I would say twenties or thirties, yes.

Q. What was said or done at that conference?

A. Then we talked over just about what should be
415 put into this agreement or settlement, to offer some settlement or try to get a settlement.

Q. Did you know at that time that Mr. Hobbs had talked to Mr. Fidler?

A. Yes, I believe he said he did.

Q. Did he report at all on what was said in his conference with Mr. Fidler?

A. At that first conference I don't recall just exactly what was said.

Q. When did you next meet Mr. Hobbs after this meeting of December 4th?

A. Well, it was—we had several meetings. I don't recall every one of them, and I don't remember just exactly when the next one was.

Q. Do you recall about how much later than the meeting of December 4th?

A. A few days.

Q. The entire negotiations apparently, from what is in the record here, ran over the month of December. Do you recall how frequently you saw Mr. Hobbs in that period?

A. I would say every day or two.

Q. And where did you see him, at your office or at his?

A. At his office.

Q. And were you usually alone or was somebody with you?

416 A. Sometimes I was alone and sometimes Mr. Carlsen was with me.

Q. I show you a letter on tissue and consisting of two pages, dated December 6th, 1940, and purporting to be a copy of a letter sent by Mr. Hobbs to Mr. Fidler, marked Defendants' Exhibit 66. Did you receive that letter from Mr. Hobbs?

A. Yes, I did.

Q. Did you ever discuss it with him?

A. Yes, I did.

Q. When?

A. Shortly after—this is what was made up of) this other letter, that other proposal there.

Q. When you refer to the other proposal you are referring to the draft in evidence here as Defendants' Exhibit 64?

A. That is right.

Q. And did you talk to Mr. Hobbs between the time he submitted Defendants' Exhibit No. 64 to you and the time that he sent this letter, Defendants' Exhibit No. 66, to Mr. Fidler?

A. Yes, after he had sent this letter we made some changes in it.

Q. After he had sent the one to you?

A. The first one there, yes.

417 Q. Defendants' Exhibit No. 64?

A. Yes.

Q. And those changes are incorporated in Defendants' Exhibit No. 66?

A. That is right.

Mr. Ooms: I would like to read this into the record.
(Thereupon, Mr. Ooms read Defendants' Exhibit 66.)

Mr. Ooms: Q. What occurred after you received that letter, Mr. Larson?

A. The proposition that was put forth in that letter was turned down by the attorneys for AMMCO. They said they wouldn't agree to that, that they wanted more, something more than that.

Q. Where did you learn of that?

A. From Mr. Hobbs.

Q. Where?

A. In his office.

Q. And what did he tell you?

A. He said that they would have to have another conference and talk it over again.

Q. Did he tell you what they were asking for?

A. He said that they had—no, I don't recall exactly what he did say at that time.

Q. Did he ever submit any written agreements to you which purported to be the proposals made by Automotive?

418 A. There was quite a bit of conversation, that was oral conversation, that is, back and forth, between the

various attorneys, and they didn't seem to be able to reach any agreement at all one way or the other. There was quite a bit of talk which, of course, isn't written down. We can't have it as a matter of record.

Q. Did he ever tell you anything about the kind of proposal they would be willing to accept?

A. Well, they wanted a settlement whereby we would have to pay the difference between the selling price of the tool that we had been selling Snap-On Tools and the one they had been selling to them, which was about \$3.00 per tool for about 15,000 tools.

Q. Where did you get that information?

A. That was told to me by Mr. Hobbs.

Q. Do you recall seeing a letter that Mr. Fidler had sent to Mr. Hobbs about the same time that Defendants' Exhibit No. 66 went to Mr. Fidler, that is, about December 6th, 1940?

A. Well, I might have, but I don't recall exactly now.

Q. And what did you do with respect to the proposals that they were submitting to Mr. Hobbs?

A. We were trying to get as reasonable a settlement as possible. We realized we were on the wrong side, as far as demanding anything, but we were still trying to make it as reasonable as possible. We didn't want to lose our entire belongings and possessions and everything we had.

420 Q. Had you ever discussed with Mr. Hobbs this testimony of yours in the interference?

A. Yes, I had. We discussed that in the first conference we had with him.

Q. Had you ever discussed the significance of that testimony in the case?

A. Yes.

Q. What, if anything, do you remember he said or you said about it?

A. Well, when we told him it was false testimony, he said that was a serious offense and we should settle it as peaceably as possible and we tried our best to not cause too much trouble.

Q. When, if any time you recall, did you discuss that with him?

A. In the first meeting and also the second one.

Q. Did you have any discussions with him about the time these letters were exchanged between Mr. Hobbs and Mr. Fidler?

A. Oh yes, there were various discussions.

Q. Did Mr. Hobbs continue to be your attorney throughout these negotiations?

421 A. Up to the time when we wouldn't—we told him we wouldn't sign one agreement he had there because Snap-On Tools still held the assignment of the patent and they wouldn't release it to us under the terms of those contracts they had submitted or talked about, anyway, and then he withdrew or sent us a letter saying he was going to withdraw as our attorney.

Mr. Ooms: Please mark this Defendants' Exhibit 67.

(Said document was thereupon marked as Defendants' Exhibit No. 67, for identification.)

Mr. Ooms: Q. I show you a letter on the letterhead of Haight, Goldstein & Hobbs, bearing date of December 18, 1940, and ask you if that is the document you are referring to?

(Handing document to witness.)

A. Yes, this is the one.

Mr. Ooms: I would like to read into the record, without having it repeated there, Defendants' Exhibit 67.

(Thereupon Mr. Ooms read Defendants' Exhibit 67, for identification.)

Mr. Ooms: Q. Well, after Mr. Hobbs withdrew, according to that letter, Defendants' Exhibit 67, what occurred?

A. Mr. Carlsen and I went to Mr. Alberts and asked him what should be done.

422 Q. Do you know when that was?

A. Probably it was on the 18th or 19th of December.

Q. What was your conversation at that time?

A. I don't recall the exact words but he said that there should be some reasonable settlement made, we shouldn't have to sign the contract as it was submitted to us.

Q. Did you have a draft of the contract at that time submitted to you?

A. I believe we did. I couldn't say for sure.

Q. In this letter of December 18th that I read to you from Mr. Hobbs, he referred to the clutch and indicating mechanism which is the subject of Larson's application in our Interference. Did you have another patent application pending at that time?

A. Yes, I believe I did.

Q. Who owned that?

A. I owned it or I applied for it through the Precision

Instrument Manufacturing Company. It was assigned to Snap-On Tools.

Q. What did you assign it to Snap-On Tools for?

A. For the—the same as the other patents had been assigned to them, just as collateral.

423 Q. When Mr. Hobbs refers to getting the right to make the clutch and indicating mechanism under that patent application, do you know what he refers to?

A. That was just oral conversation, as I recall, there was no contract signed for that.

Q. Was anybody asking for that?

A. Oh yes, Automotive Maintenance Machinery Co. wanted both of our patents and, in fact, they wanted to put us out of business, frankly, that is what they wanted to do.

Q. You said they asked for both of those patents and you said before they asked for the difference between the price at which Snap-On sold wrenches and they were selling. Did they ask for anything else?

Mr. Lindsey: May I get that clear, Mr. Ooms? When you speak of patents, those were applications?

Mr. Ooms: That is right, applications.

The Witness: Patent applications.

Mr. Ooms: Q. Do you recall anything else they were asking for?

A. Not at present; no.

Q. Do you recall anything about the so-called defense fund?

A. Yes, that is true.

424 Q. What was the defense fund?

A. It was a matter of \$4,000 we had built up at Snap-On Tools against possible litigation of any kind for patents and they wanted that entire fund.

Q. Do you recall where the so-called \$4,000 defense fund came from? Whose money was it?

A. That was our money, Precision Instrument Manufacturing Company money.

Q. Who was holding it?

A. Snap-On Tools.

Q. Why?

A. As a trust fund against any possible litigation on this patent application.

Q. Was that under any agreement?

A. That is under our preliminary agreement or under the contract that was signed with them, yes.

Q. Did you turn over that fund to them?

A. To—

Q. To Automotive?

A. No, sir.

Q. Now, you said you went to see Mr. Alberts after Mr. Hobbs sent you that letter of December 18th, 425 Defendants' Exhibit 67. Just tell us everything you can about what occurred at that time.

A. Well, he said it wasn't reasonable, the settlement they wanted, and he felt we should go back and see Mr. Hobbs and see if some other agreement couldn't be reached and, so, we did go back to see Mr. Hobbs.

Q. When?

A. It might have been the same day or the next day, around about the 18th or 19th of December.

Q. Do you recall what happened at that time?

A. Yes, I remember what happened.

Q. What did happen?

A. I told him under the circumstances I thought he hadn't given us any ways near what we were entitled to as attorney for us. I told him that I knew that there had been an investigator investigating in the town out there for some time and that Mr. George B. Thomas was under duress from the Automotive Maintenance Machinery Co. and if they had confronted their attorneys with that, that is Automotive, there would be a settlement made next day.

Q. You said he was under duress. What do you mean by that?

A. Because he had stolen several pieces of machinery 426 cry from them and sold them.

Q. Where did you learn that?

A. After I got associated with him.

Q. Who told it to you?

A. He did.

Q. Do you know where any of that machinery went?

A. Yes, sir.

Q. Where?

A. There was a parts house in Woodstock, Illinois that bought quite considerable of it from him. There was another in the city of Chicago that bought quite a bit from him.

Q. On December 18th or 19th, you say you told that to Mr. Hobbs?

A. That is right.

Q. Did he continue to represent you then?

A. Yes, sir.

Q. Did you have any further conversation with him about the case other than just what you have told us here this moment?

A. Only at various times he continued to tell us what a serious position we were in. The attorneys for AMMCO were always saying they were going to the District Attorney and other patent officials and they were going to
427 turn loose the dogs on us unless we signed the contract as they saw it or wanted it.

Q. Who told you that?

A. Mr. Hobbs.

Q. When?

A. I would say during the last week or so before the final contract was signed.

Q. Was it told to you more than once or just once?

A. Several times, yes.

Q. When he said they were going to the District Attorney and when he mentioned turning the dogs loose, what did that mean to you?

Mr. Lindsey: I object, your Honor. It doesn't matter what it means to him.

The Court: Sustained.

Mr. Ooms: Q. Was there any discussion with Mr. Hobbs about the testimony taken in the Interference and which he mentioned in his letter he never read?

A. Yes, Mr. Carlsen and I told him the facts.

Q. Did you know that testimony had been transcribed into books at that time?

A. I didn't, no.

428 Q. You knew about this drawing which is in evidence here as Defendants' Exhibit 9? You knew that was in existence?

A. Yes.

Q. Was there ever any discussion about the evidence that had accumulated in the Interference?

A. Well, except that it was still there; we knew it hadn't been destroyed.

Q. Was there any discussion about destroying it?

A. We were told that if we would settle and when a settlement was made, there would be a big bonfire, by Mr. Hobbs, that there would be a big bonfire that would burn up all evidence.

Q. Who told you that?

A. Mr. Hobbs.

Q. When?

A. At his office.

Q. Who brought up that subject as to what would take place with respect to the evidence?

A. Well, if we would sign the contract, if there was a settlement made at all, all evidence would be destroyed, there wouldn't be any of it left, there wouldn't be any against us thereafter, it would be settled once and for all.

429 Q. Who raised the question about the existence of evidence?

A. Mr. Carlsen and I with Mr. Hobbs. We asked him what would happen in the future. He said there wouldn't be any evidence, that evidence would all be destroyed as soon as a settlement was made.

Q. Do you recall about when that was said to you?

A. I believe at the last meeting we had with him when we had finally signed the contract.

The Court: We will take a recess of about ten minutes.

(A short recess was taken, after which the following occurred:)

Mr. Ooms: Q. Mr. Larson, some subpoenas were sent out in the week of December 18, 1940 for witnesses in this Interference and your wife was among them, was she not?

A. That is right.

Q. Did your wife know anything about the work of Zimmerman?

A. No.

Q. Do you know why she was called in the Interference?

A. No, I do not.

Q. What motivated you in signing the agreement, Exhibit 4 before the court?

Mr. Lindsey: I object, if your Honor please. The 430 instrument speaks for itself.

The Court: I believe he can answer that question.

The Witness: May I see that one, please?

Mr. Ooms: Q. That is your agreement with Automotive.

(Handing paper to witness:)

A. Oh, the fact they gave up somewhere near a reasonable settlement.

Q. Have you finished your answer?

A. I think so, yes.

The Court: That is the agreement between Automotive and the Precision Instrument plus Larson?

Mr. Ooms: That is correct.

The Witness: Yes.

Mr. Ooms: Q. Do you recall when you signed that agreement?

A. It was December 20th, wasn't it?

Q. Where did you sign it?

A. In Mr. Hobbs' office.

Q. Who was there at that meeting of December 20, 1940?

A. Mr. Carlsen and Mr. Hobbs and myself, as near as I recall.

Q. There was nobody there representing the other side?

A. No.

Q. What was said when you signed that?

431 A. Well, that that settled all differences, troubles, and that was the end of all negotiations with them.

Q. Anything else you can remember?

A. Well, at the same time they said all this testimony and all evidence that had been accumulated would be burned.

Q. Who said that?

A. Mr. Hobbs.

Q. Was Mr. Alberts at that meeting that day?

A. No, he wasn't.

Mr. Ooms: That is all from Mr. Larson.

Cross Examination by Mr. Fidler.

Q. Mr. Larson, did you ever talk to Mr. Wacker in connection with negotiations leading up to the settlement of the Interference?

A. No, sir.

Q. Did you ever talk to Mr. Lindsey?

A. No, sir.

Q. Did you ever talk to me in connection with those negotiations?

A. No, sir.

432 Q. Mr. Ooms read here a letter dated November 11, 1940, which is in evidence as Defendants' Exhibit No. 62. I ask you whether or not this letter was shown to Mr. Thomasma. I hand you the letter.

(Handing letter to witness.)

A. Yes, it was.

Q. And when was that letter shown to Mr. Thomasma?

A. The same day we received it or the day thereafter, at noontime.

Q. Under what circumstances was it shown to Mr. Thomasma?

A. We asked him what he knew about it.

Q. Who was present at the time that that letter was shown to Mr. Thomasma?

A. Mr. Carlsen, Mr. Thomasma and myself.

Q. Was that in an automobile in front of the Hack Machinery Company in Des Plaines?

A. Alongside the building, yes.

Q. Now, Mr. Carlsen in testifying in the pretrial depositions testified that there was no such automobile conference with Mr. Thomasma with respect to this letter, Defendants' Exhibit 62. Was that testimony true?

A. I would not know; I did not give it.

433 Q. I asked if he gave such testimony, was it true?

A. It couldn't have been if he gave it!

Q. There was such a conference?

A. There was such a conference, yes.

Mr. Lindsey: I suggest you read that testimony in the record, Mr. Fidler.

Mr. Fidler: Q. Now, did Mr. Alberts ever tell you of a conference that he had with me in my office on November 20, 1940?

A. I don't know exactly. I couldn't recall the exact day of any conference had.

Q. Now, he did tell you about a conference that took place in my office on November 28, 1940 at which time Mr. Thomasma, Mr. Johnson, Mr. Alberts and Mr. Wacker were present, is that correct?

A. On November 28th?

Q. Yes.

A. Yes, he did.

Q. Did he tell you about any other conference he had with me in my office?

A. Mr. Hobbs and, I believe, Mr. Alberts, too, both told me of various conferences they had at your office.
434 Each time it ended up by not any settlement or—

Q. Did he tell you about any conference where the testimony taken in the Interference was discussed in my office where Mr. Alberts and I were alone?

A. I don't recall that he did, no.

Q. In other words, you were told only of the conference he had with Mr. Thomasma in my office so far as discussion of the testimony was concerned, is that correct?

A. That is right.

Q. I understand that you were represented solely by Mr. Hobbs in the settlement negotiations?

A. That is right.

Q. Mr. Alberts didn't have anything to do with that on your behalf?

A. Not on my behalf, no.

Q. And all contacts made with Automotive Maintenance Machinery Co. in connection with the settlement matter was with Mr. Hobbs, is that correct?

A. On my behalf? Yes.

Q. And you also mean in behalf of Precision, too, is that correct?

A. Oh yes.

435- Q. Now, I understand from testimony previously given by you that Mr. Hobbs advised you that the contract you entered into on December 20, 1940 in settlement of the Interference was a fair contract. Is that testimony still true?

A. That is right.

Q. Now, at the time that you contacted Snap-On in connection with the sale of your wrench, you knew that Automotive was selling that wrench to Snap-On, did you not?

A. I did.

Q. And you knew at that time the construction of the wrench that Automotive was selling to Snap-On?

A. Yes, I did.

Q. Did Mr. Alberts ever ask you as to the identity of the incorporators of Precision Instrument Manufacturing Company?

A. No, he never did.

Q. Did he ever ask you anything about the corporate setup of that company?

A. No, sir.

Q. You also knew, did you not, that Mr. Thomasma had at sometime gone to Snap-On in connection with wrenches that were being manufactured by Automotive for Snap-On?

A. Yes, I knew that.

Q. Now, when you filed your application that was 436 involved in that interference, which is the application terminating in the Larson patent involved in this suit, you knew, did you not, that you were going to supply your wrenches to Snap-On?

A. Yes, I knew that.

Q. And you knew at that time that Snap-On was going to take your entire output of wrenches?

A. That is right.

Q. And you knew at that time that you were to be the sole supplier of those wrenches for Snap-On, did you not?

A. I hoped to be; yes; I didn't know for sure, no.

Q. Well, the wrench was one covered by your patent application?

A. That is right.

Q. And was it your understanding then in view of that that they were going to get the entire supply of those wrenches from your company?

A. That is right.

Q. Did you see a copy of Zimmerman's preliminary statement in the Interference 77565 at any time?

A. Not that I recall, no.

Q. You didn't see a copy of that preliminary statement setting forth the dates of invention of the party Zimmerman before you took or gave testimony in the Interference?

437 A. Not that I recall, no.

Q. You know what a preliminary statement is, don't you?

A. Yes, I do.

Q. How did you know the dates you had to beat in the Interference?

A. Because Mr. Thomasma had recommended to put them back far enough to be sure they would be prior dates and he said he thought that would be back far enough.

Q. And that information was sufficient for you to prepare a preliminary statement to beat Zimmerman in the Interference?

A. That is right.

Q. Who told you what you needed in the way of information for a preliminary statement?

A. What do you mean?

Q. Well, you know what the preliminary statement included?

A. Yes.

Q. Dates of invention, conception, disclosure reduction to practice?

A. Yes.

Q. Where did you get the information as to what was required for the preliminary statement?

A. From Mr. Alberts.

438 Q. When did you get that information?

A. In the fall—let's see—in the fall of 1938.

Q. Now, Mr. Larson, were you ever involved in an Interference prior to that one, No. 775654?

A. No, sir.

Q. Were you ever involved in any kind of a lawsuit where it was necessary for you to procure evidence?

A. No, sir.

Q. Well, now, who told you what you needed in the way of witnesses in order to prepare your testimony in the Interference?

A. I was told I should have witnesses to back up any statement that I made.

Q. Who told you that?

A. Why, Mr. Alberts.

Q. Did you at that time tell Mr. Alberts what the story was going to be?

A. Not right at that time, no; later, I believe.

Q. Well, how much later?

A. Oh, several months later, I believe, at the same time the Interference was declared and then he had to produce witnesses and proof.

439 Q. You told him the story that—about the development of your wrench?

A. Oh yes.

Q. That was the story you told during the taking of your testimony?

A. That is right.

Q. Did he explain to you then the witnesses you would require in order to corroborate that story?

A. As I recall, he did, yes.

Q. That is, a witness with respect to the making of castings originally?

A. That is right.

Q. With the making of a drawing?

A. That is right.

Q. And so forth?

A. Yes.

Q. And after that information was given to you by Mr. Alberts, what did you do?

A. I supplied the necessary evidence.

Q. Now, there was a Mr. Schultz that testified in the Interference?

A. That is right.

440 Q. And he produced various records?

A. That is right.

Q. Was the testimony he gave in the Interference true or false?

A. It was false.

441 Q. And where did the testimony come from that he gave falsely?

A. I told him what to say.

Q. And he knew at the time he gave it that it was false?

A. He possibly did.

Q. Do you know whether he did?

A. Yes, for castings that I had received from him, not on that particular job.

Q. Now, Mr. Schultz is the casting supplier for Precision Instrument?

A. That is right.

Q. What is the name?

A. Ravenswood Brass & Aluminum Foundry.

Q. He has supplied all the castings for your company, is that correct?

A. Quite a number of them; not all of them.

Q. Who besides Mr. Schultz is a supplier?

A. We bought from other suppliers—

Q. Who were they?

A. I do not recollect exactly right now; but we have other suppliers.

Q. How about Mr. Ford, the fireman in Evanston; so the testimony that he gave in Interference here was false?

442 A. It was false.

Q. Where did he get the information in order to give that false testimony?

A. I told it to him.

Q. Did he know that the testimony was false at the time he gave it?

A. He probably did.

Q. Do you know whether he did?

A. I knew it was.

Q. Did he know it was false at the time you put it in his mouth?

A. I imagine he did; yes, sir.

Q. Did Mr. Alberts ever check with you the testimony that you were to give in Interference, either before or after you gave it, excepting what checking he did in connection with the letter of November 11, 1940, Defendants' Exhibit 62, and the conference that he had with you on November 28th after he had heard Mr. Thomas's story.

A. As near as I know, no.

Q. Did he ever check with any of your witnesses the testimony that they were to give in the Interference?

A. To my knowledge, he didn't, no.

Q. Now, do you know why the Snap-On was inquiring of you, or Precision, as to why there was any one of 443 AMMCO, or associated with AMMCO that was connected with your company?

A. No, I don't.

Q. Who on behalf of Snap-On ever made such an inquiry?

A. What inquiry?

Q. As to whether or not there was any one associated or connected with AMMCO who was working with or associated with Precision?

A. Mr. Alberts, when the preliminary understanding was signed, yes.

Q. Who asked you then—he asked you, then if AMMCO was associated?

A. Yes.

Q. Why did he ask you that question?

A. Because they wanted to have nothing to do with the company.

Q. With what company?

A. Automotive Maintenance Machinery Co., or any of its employees.

Q. Do you know why they did not want to have anything to do with Automotive or any of its employees?

A. I didn't know at the time, no.

Q. Notwithstanding the fact that you knew of Thomas's connection with Automotive Maintenance Machinery Co.?

A. That is right.

444 Q. And his association with you while he was still working for that company, and notwithstanding the

fact that you knew that he helped frame Precision, you still don't know why any such precaution was taken?

A. I don't, no.

Q. Now, isn't it true that Mr. Thomasma did do some work for Precision?—I am talking about George B. Thomasma.

A. No, he never did any work for Precision.

Q. Didn't he help set up machines and benches, and so forth, in getting Precision ready for manufacturing?

A. He did in that way, yes; I would say about a week or ten days' work, he put in for Precision Instrument.

Q. Didn't he work at night, after having worked at the Automotive?

A. With the exception of a week or ten days, he didn't, no.

Q. But he did do some work for Precision?

A. About a week or ten days, yes.

Q. Now, will you please tell us why you gave false or perjured testimony in Interference No. 77565?

A. Yes.

Q. Please state that fully.

A. Because Mr. Thomasma said that to get the patent 445 sent we would have to get out dates early enough to be able to be ahead of Zimmerman's patent; and he told us approximately what time he thought that patent would have to be set back to, or the dates would have to be set back to get ahead of that patent.

I realize now that I made a serious mistake when I did it. It has been done and there is nothing that I could do now to stop what I did then.

Q. Is that the best answer that you can give as to the reason why you gave false testimony in that Interference?

A. I had several years' work that I had put in on this tool and never realized any profit off of it; they had been all hard hours of work. I saw the possibility of losing everything if I had no patent. To this day I believe that the wrenches are not similar, but the patent wording says they are.

Q. I will now read you the testimony given by Mr. Carlson in his pre-trial deposition:

Q. Do you recollect whether or not the original of this letter of November 11th, 1940 was discussed with any one but you and Mr. Larson?

A. No.

"Q. Do you have any recollection of having gotten in touch with Mr. Thomasma after receiving this letter?

446 "A. No.

"Q. Have you any recollection of having shown this letter to Mr. Thomasma?

"A. No.

"Q. Do you know whether or not Mr. Thomasma, about the time that this letter was received, had knowledge of its receipt?

"A. No, he didn't have.

"Q. Didn't you and Mr. Larson get in touch with Mr. Thomasma and show him this letter, at which time he was working for the Hack Machine Company?

"A. No.

"Q. At Des Plaines?

"A. We did not.

"Q. Didn't you and Mr. Larson ride in an automobile with Mr. Thomasma at about the time of the receipt of this letter of November 11th, 1940 and show to him such letter?

"The Witness: How long after the beginning of the testimony did this thing occur, did this letter occur?"

And it was answered:

"This letter was dated November 11, 1940; and if 447 I recall correctly, the testimony ended about November 4, 1940, this letter having been written about a week after the conclusion of the testimony."

The witness then answered:

"No, neither one of us talked to Thomasma from the beginning of the testimony to the end of it, or even after the end of it. I do not believe either one of us as much as said hello to him since the beginning of this testimony.

"Q. Didn't you or Mr. Larson talk to Mr. Thomasma at some time about this letter of November 11th, 1940?

"A. No."

Was that testimony true, as given by Mr. Carlsen?

A. I am afraid it was not, because I remember after having read the letter that we did talk to him about it. Because he had hired Mr. Krichiver as his attorney, and caused us considerable trouble in our incorporation. We asked him at the same time if he knew all about Krichiver; he had never heard of him, never hired him as his attorney, and had nothing to do with it.

Q. Now, as I understand your testimony, you decided 448 to perjure yourself after the Interference was declared; is that correct?

A. No, that was before that.

Q. Well, was there any necessity for committing perjury before the Interference was declared?

A. The preliminary statement had to show the dates far enough back to get the patent, didn't it?

Q. Let me explain this to you, Mr. Larson—

A. Yes.

Q. There is no necessity for filing a preliminary statement until the United States Patent Office declares an Interference.

A. I understand.

Q. And after the declaration of an Interference, one of the first things that is done is the filing of a preliminary statement?

A. Yes.

Q. Now, was there any occasion for you to decide to commit perjury before the declaration of that Interference?

A. No.

Q. Did you ever prior to that time make a false oath with respect to the subject matter of that Interference?

Mr. Lindsey: You are speaking of the last half of 1940, are you not, Mr. Fidler?

449 Mr. Fidler: Yes.

Mr. Freeman: Is that cross examination?

Mr. Ooms: I think the witness is entitled to have that stated clearly.

The Court: Start all over again. There are five lawyers here trying to suggest something about the answer. Now let us put the question so the witness will understand.

Mr. Fidler: Q. Did you ever, prior to the filing of your preliminary statement in the Interference, have occasion to make false oath with respect to the wrench which you were making at Precision?

The Witness: A. Not that I know of, no.

Q. Well, now, Mr. Larson, I show you a copy of an affidavit which was marked during the pre-trial depositions as Automotive Exhibit No. 8; this is a copy of an affidavit which is unsigned, and I understand that the original of this affidavit is in the possession of Mr. Alberts—if Mr.

Alberts has that original, I would appreciate if he would produce it.

Mr. Alberts: Yes, sir.

(Producing document.)

Mr. Fidler: Q. I now hand you the original of the affidavit to which I referred, and ask you to state whether 450 or not that is your signature at the end of that affidavit?

The Witness: A. Yes, this is.

Mr. Fidler: Q. And that affidavit is entitled In an Application for Patent, which is the application which was involved in the Interference; is that correct?

A. That is right; except this is dated October, 1938, not 1940. As I understood the question before, you said during 1940.

Mr. Fidler: I would like to read this affidavit, your Honor, the same way that Mr. Ooms read the letters; and I will offer the affidavit.

The Court: Go ahead.

(Whereupon Mr. Fidler read said affidavit to the Court.)

Mr. Fidler: Q. Mr. Larson, how many witnesses testified in Interference No. 77,565?

A. I don't know exactly.

Q. Well, right besides yourself; does that refresh your recollection?

A. Possibly, yes.

Q. Who asked you to testify in this case and admit your perjury in the Interference?

A. In this case?

Q. Yes.

A. The one we are in now; you mean?

451 Q. Yes.

A. My attorneys.

Q. Who is that?

A. Mr. Ooms.

Q. What was the stated purpose of your so testifying?

A. To settle the discussions or disagreements for once and all; that, as I said before, we should have had a bonfire at the end of the other one, which was never held; and this has been held as a club over our heads all this time. The first it came along where there was any reason at all that AMMCO wanted it, they sued us for an infringement, where there is no infringement, for taking a couple of our

patent claims and putting it in their patent that was issued to me, where I never knew anything about that first patent.

Q. That was not stated to you by Mr. Ooms?

A. That was told me by Mr. Alberts; definitely, there were points in there that were never in the first patent.

Q. Then, Mr. Alberts asked you to testify that you committed perjury in this case?

A. No, Mr. Ooms.

Q. What did Mr. Ooms state to you, as the purpose in you appearing here and admitting your perjury in the Interference?

452. A. Ask Mr. Ooms the proper answer there; I am sure I couldn't give it.

Q. Is that the best answer you can give?

A. I am afraid it is, yes.

Mr. Ooms: I think he has answered that question, your Honor. I do not like to interrupt, or I do not like to have it appear I am trying to suggest anything to the witness; but he did answer the first time, and did answer the second time.

Mr. Fidler: No implications; I am trying to get the answer as to the fact.

Q. What, if anything, were you given or promised in return for so testifying?

Mr. Ooms: Object to that question. That assumes something was promised. I do not do business that way.

Mr. Fidler: I beg your pardon; I will restate the question—

Q. Has anything been given to you or promised you, in return for so testifying?

The Witness: A. No, sir.

Mr. Fidler: I wish to offer as Automotive's Exhibit 8-A, the affidavit identified by the witness and read to your Honor during the cross-examination.

The Court: There being no objection, it may be admitted.

453. Mr. Ooms: May we have the understanding that wherever we do not object, it may be admitted?

The Court: Yes, sir.

(Said affidavit so offered and received in evidence, was marked AUTOMOTIVE'S EXHIBIT 8-A.)

Mr. Fidler: Q. When did Mr. Ooms ask you to testify in this case?

The Witness: A. I do not recall exactly.

Q. Well, what is your best recollection?

A. I have no recollection on it at all; I do not remember.

Mr. Fidler: That is all the cross-examination.

The Court: What is the date of the testimony given before the Patent Office of the Interference?

Mr. Fidler: That testimony, your Honor, started, the taking of it started on October 24, 1940, and consumed about five days' time. There were some interruptions; the testimony was completed on November 4th, 1940, but the consumed time was about five days.

The Court: How long will you take now, Mr. Ooms?

Mr. Ooms: Just a few minutes.

454

Redirect Examination by Mr. Ooms.

Q. Do you recall having any conversation with me about this perjury, at all?

A. Yes, I remember a conversation.

Q. Do you recall when we first talked about it?

A. No, I don't, exactly.

Q. What do you recall of the conversation?

A. Oh, I don't recall a great deal of it, except that it would be the best thing to get it over with, so that it would not keep coming up again.

Q. Did I discuss with you your testimony in the Interference case?

A. Yes, I believe you did.

Q. Did you know that I had read that testimony?

A. I didn't know for sure, no.

Q. Did I ever ask you whether that was true or not?

A. Yes, you asked me.

Q. Do you know what else I read in the ~~case~~?

A. No, I don't.

Q. Did I get your approval of the statements that I made in the answer, before I filed that?

A. Yes, you did.

Q. Did I tell you what it might mean to you personally?

455 A. Yes, you did.

Q. What did I tell you?

A. You said I might have to go to jail; I would have to stand the consequences, regardless.

Q. What did you say?

A. I said I was willing to do what was necessary to get it straightened out.

Q. Did you tell me why you were willing to go to jail?

A. Because I felt that I did not want it hanging over my head the rest of my life.

Q. Somewhere in there, in the testimony on cross-examination, you said that this preliminary statement had been prepared in the fall of 1938; that was just a misstatement, you meant the fall of the following year, did you not?

A. As far as the preliminary statement of the Interference, yes.

Mr. Ooms: That is all with this witness. I would like to offer, your Honor, the exhibits, Defendants' Exhibits 62 to 67, inclusive, which were referred to and identified by this witness.

The Court: There is no objection; they may be admitted.

(Said documents so offered and received in evidence, 456 were marked DEFENDANTS' EXHIBITS 62 to 67, inclusive.)

The Court: Any further questions?

Recross Examination by Mr. Fidler.

Q. I have a question or two: Mr. Larson, you approved of the filing of the pleading in which your perjury was pleaded in this case, did you not?

A. Yes, I did.

Q. And how long before you gave your approval of that was it that you discussed that matter with Mr. Ooms?

A. I imagine that would be a matter of record; only a few days, as I recall.

Mr. Fidler: That is all, your Honor.

(Witness excused.)

457 Mr. Freeman: Is Mr. Baumann in the Court Room?

If he is, will he please take the stand?

Mr. Lindsey: May I place on the record, may your Honor please, the fact that Mr. Freeman requested me, very properly, to have Mr. Wise present? I had him present in my office, and Mr. Freeman came over. He handed Mr. Wise a subpoena which happened to be directed to Mr. Baumann. Mr. Wise asked me what to do about it. I told him that I wished that he would hand it to Mr. Baumann, if he could get in touch with him.

I understand Mr. Baumann is working on some Government matters and is out of town a great deal, and Mr. Wise did so. There was nothing improper about serving the

subpoena. I just wanted the record to show that we have cooperated in every way with defendants to have any witness which they desire present in the Court.

Isn't that a correct statement?

Mr. Freeman: That is a correct statement.

2

HOWARD H. BAUMANN, called as a witness herein on behalf of the Defendants, having been first duly sworn, was examined and testified as follows:

458

Direct Examination by Mr. Freeman.

Q. Mr. Baumann, will you give us your full name?

A. Howard R. Baumann.

Q. And your present address?

A. 4900 Blackstone Avenue.

Q. Chicago?

A. Chicago, Illinois.

Q. And by whom are you employed at present?

A. William J. Buras, International Defective Agency.

Q. And are you working out of Chicago?

A. I am working in Chicago principally, in and out of the city occasionally.

Q. Have you ever talked to me prior to a moment ago when I asked whether or not you were in the Court Room?

A. No, sir.

Q. Have you ever talked to Mr. Ooms, the first gentleman standing up now?

A. No, sir.

Q. Have you ever talked to Mr. Alberts?

A. No, sir.

Q. Have you ever talked to Mr. Grover?

A. No, sir.

Q. Have you ever talked to Mr. Johnson?

A. No, sir.

459 Q. Have you ever talked to Mr. Daniel?

A. No, sir.

Q. You do know Kenneth R. Larson, do you not?

A. I have met Kenneth Larson, yes, sir.

Q. And, likewise, you have met Mr. Carlsen?

A. Yes, sir.

Q. And, of course, you know George B. Thomasma?

A. Yes, sir.

Q. Now, in the summer of 1940 by whom were you employed?

A. By John A. Wise.

Q. Investigators?

A. That is right.

Q. And how long had you been with Mr. Wise?

A. I just went to work for him on August 1. I had worked for him before, but I hadn't worked for him during that entire year prior to that.

Q. You have had off and on business relationships with John A. Wise & Son?

A. That is right.

Q. They have an office at 20 E. Jackson, is that correct?

A. We had an office at 20 E. Jackson at one time.

Q. And that was in Room 800 of that building?

A. An office in 1202, also in the building.

Q. Of that same building?

460 A. That is right.

Q. Do you recall an investigation that you made in and around Des Plaines, Illinois, starting about August of 1940 and continuing until January of 1941?

A. Yes, sir.

Q. And under whose direction was that investigation made?

A. John A. Wise.

Q. Now, tell us what instructions you were given by John A. Wise when you started to make the investigation in August of 1940?

A. When I went out to—when John A. Wise gave me instructions he told me that there was a matter of a patent infringement involved, whereby there was a question involving this patent on a wrench. He told me that there was a concern in Des Plaines that were making a wrench, they called it the Precision Instrument Company, Precision Tool, I believe it is, and that also in some way there was a concern in Kenosha, I believe, by the name of the—no, in North Chicago, Maintenance—AMMCO is the best I can tell you. It is American Maintenance, I believe, and that they had made application for a patent and that the Kenneth R. Larson and this George Thomasma were members of this firm in Des Plaines, and that some time prior to this George Thomasma had worked for the American Maintenance Company.

461 Q. That is Automotive, so that the record—

A. I am sorry: Automotive Maintenance, is that it?

Q. Yes.

A. And he asked me to go out and check and find what I could about this particular—pick up all the information that I could, and I did, or attempted to.

Q. Were you given any memoranda or did you make any notes as a result of this?

A. I made some notes at the time which I stuck in my pocket.

Q. Were you given any memoranda prepared by Mr. Wise?

A. I don't believe so.

Q. Or by the people he was representing?

A. No, sir, I don't believe so.

Q. Did you know who Mr. Wise was representing?

A. He told me it had to do with the American—Automotive Maintenance Company, that it all.

Q. And when did you first meet Mr. Fidler, the gentleman sitting directly in front of you?

A. I don't remember, sir.

Q. You were in the offices of Davis, Lindsey, Smith and Shonts, were you not?

A. I had been there, yes, sir.

Q. Several times?

462 A. Prior to this, if that is what you mean.

Q. That is, during the period of the investigation?

A. I don't think I was in their office until, oh, way in the latter part of the investigation, if I remember.

Q. And have you been in their office recently?

A. Yes, sir.

Q. When?

A. About a week ago, I believe.

Q. In connection with this case?

A. Yes, sir.

Q. They talked to you?

A. Yes.

Q. And with whom did you talk at that time?

A. Mr. Fidler, Mr. Wise—

Q. And who else?

A. Mr. Lindsey and Mr. Hibben.

Q. Did they tell you that there was a suit pending, that you might be called as a witness?

A. They told me I might be called as a witness, yes, sir.

Q. And was Mr. Smith present at that time?

A. No, sir.

Q. Do you know Mr. Smith?

A. Do you mean of that firm?

Q. No, Mr. Smith who is sitting here at my right.

A. No, sir, I don't.

463 Q. Did you talk to Mr. Hibben?

A. I did that day, yes, sir.

Q. Who arranged for you to go to the offices of Davis, Lindsey, Smith and Shonts?

A. Mr. Wise.

Q. You say that about a week ago?

A. Yes, sir.

Q. Have you recently been working in and around Cleveland, Ohio?

A. No, sir.

Q. Were you shown any paper, exhibits or any documents when in the offices of Davis, Lindsey, Smith and Shonts a week ago?

A. No, sir, I don't believe so.

Q. What was said to you then in connection with this case?

A. Just merely asked me what I remember about the case.

Mr. Lindsey: May your Honor please, I think this is entirely immaterial. We haven't any objection to bringing out what we said, but it has nothing to do with this matter of perjury and compounding perjury.

The Court: Do you object to this?

Mr. Lindsey: I object.

The Court: Objection is sustained.

464 Mr. Freeman: Q. Going back to the investigation you made, tell me what you did in order to set up the instrumentalities that you used in making the investigation?

Mr. Lindsey: Same objection, if your Honor please. I don't see that this has anything to do with either the question of perjury or compounding of perjury.

Mr. Freeman: If your Honor please, I think it is material and it is important, because the defense here is that they had merely a suspicion, and we will show that when you spend \$5,000 to make investigations, when you hire two detectives, when you have handwriting experts, when you go out and interview a lot of people, you must have a little bit more than mere suspicion, and we will connect it up. I endeavored to find out from the invoices

that were given to me by Mr. Fidler and Mr. Lindsey, and they have cooperated in that respect, as to what was meant by a "pretext," which appears upon the invoices, and Mr. Fidler says he doesn't know, so I will ask the man who set up the pretext, to tell this Court what he knows about it, and I think it is important.

Mr. Lindsey: May the Court please, I have no objection to questions directed to this witness as to what he found out and what he told us, or Mr. Fidler. That is the only question. How this information was obtained is entirely immaterial. What pretext was established—

Mr. Freeman: I think it is important, because I think this Court should have all the background and not just a part of it.

The Court: The objection is overruled.

Mr. Freeman: Q. Would you like to have the question read to you again?

A. Yes, please.

(The last question was read by the Reporter.)

The Witness: If you are referring to the pretext, I don't know anything about that. That was set up by Mr. Wise.

The Court: What is the pretext?

Mr. Freeman: That is what I am trying to find out, your Honor. There was an invoice for some \$557.85, an expense item of August 17, 1940, and I asked that question of Mr. Fidler, and I haven't had an answer yet. I am asking—

The Court: He says he doesn't know the answer.

Mr. Freeman: We will have Mr. Wise, and we may get the answer.

The Court: Then wait for him.

Mr. Freeman: Q. Can you tell us what you did when you started the investigation?

A. I went out and contacted or attempted to find out all

I could about the plant and who the members of the 466 firm were, such as Thomasma and Kenneth Larson.

Q. And did you work continuously, starting early in August, 1940 up to the early part of 1941?

A. I believe the latter part of 1940.

Q. And you worked continuously?

A. Yes.

Q. And you operated out of Des Plaines?

A. Yes, sir. I lived in a hotel in Des Plaines.

Q. At the Elmwood Hotel there?

A. I have forgotten the name of it, frankly.

Q. By the way, do you recall the owner of that hotel?

A. No, I don't, sir. I don't recall his name.

Q. Did you by any chance tell him you were a F. B. I. man?

A. I did not.

Q. Do you know Walter Dutton?

A. I don't recall, sir. I believe I have heard the name.

Q. Did you ever make any trips up to Woodstock, Illinois?

A. Yes, I believe I did. I don't remember now whether I did or not.

Q. And that was part of this same investigation?

A. I think so.

Q. You went up to Woodstock while you were working out of Des Plaines in connection with this Automotive investigation, did you not?

467 A. I know I thought of it. I don't remember whether I went up there or not, to be perfectly frank. I don't remember whether I did or not.

Q. Let us take it easy and see if you can reflect as to the number of times that you went to Woodstock to—

A. If I went up at all, I didn't go over once, sir.

Q. Do you recall the name Walter Dutton?

A. I remember the name now that you have mentioned it.

Q. And he is in the automotive parts business?

A. Yes.

Q. Perhaps I might endeavor to refresh your memory. Was there any question as to certain property belonging to Automotive finding themselves in the Dutton place of business at Woodstock?

A. I don't believe so, sir. If I remember correctly, my reason for thinking about contacting Dutton at all was in connection with Carlsen, Mr. Carlsen.

Q. That is one of the men of the Precision Instrument Company?

A. That is right.

Q. Were you given any information as to the disappearance or the unauthorized removal of property belonging to Automotive?

A. I don't believe so. I don't remember it, sir.

Q. The name George B. Thomasma is familiar to you?

468 A. Oh, yes.

Q. You met Mr. Thomasma?

A. Yes.

Q. And you met Mrs. Thomasma?

A. That is right.

Q. And you had lunches with them? And dinners with them, did you not?

A. Yes.

Q. And did you ever go into any of the taverns in and around Des Plaines?

A. Yes.

Q. Many times?

A. Yes, sir.

Q. Many evenings?

A. Yes, sir.

Q. Over the period starting when?

A. When the case started, when I went out to Des Plaines.

Q. Did you meet Mr. Thomasma shortly after you got into the job in August of 1940?

A. I don't remember exactly what time. I met him sometime after I started, of course.

Q. You started early in August of 1940; that is correct, is it not?

A. That is correct.

Q. And, of course, you had certain expenses?

469 A. That is right.

Q. And who paid those expenses, who paid that expense?

A. Mr. Wise.

Q. Did you give him any itemized statement of your expenses, do you recall?

A. I just made a note on a piece of paper as to what my expenses were.

Q. Without any itemization whatever?

A. I believe I itemized it as to hotel and food. I am not positive of that, but I am reasonably sure I did.

Q. And you are telling us now that the item of expense and pretext, up to and including August 17th, 1940, in an amount of \$557.85, you know nothing about?

A. That is right.

Q. Did you have any rather unusual expense during the week ending August 17th, 1940?

A. I didn't, sir.

Q. What was that?

A. I didn't, no, sir.

470 Q. What would your expense run usual?

A. I don't remember, sir. I presume it ran—my expense probably ran around seven, six or seven dollars per day.

Q. Did you ever give any money to George B. Thomasma?

A. I believe later in the case I gave him a matter of four dollars at one time to—I believe it was four dollars, I am not sure of the amount, it was in that vicinity—to compensate him for his time when he came downtown.

Q. That was for half a day?

A. I believe so, yes.

Q. Do you recall what you paid him for a day's time?

A. I don't remember paying him anything except that one time.

Q. Has your memory been refreshed recently?

A. I only remember questions similar to what you ask me and I recalled them as I could.

Q. You were examined unofficially?

A. That is right.

Q. There wasn't anybody present from the defendants, either Snap-On or Precision, when you were questioned?

A. No; it was more of a general conversation as to asking me to recall what I remember.

471 Q. Did you have an automobile at your disposal at Des Plaines?

A. No, sir.

Q. Did you ever make any payments on Mr. Thomasma's car?

A. No, sir.

Q. Did you ever pay for any automobile storage?

A. I don't believe so, no. I don't know any reason why I should.

Q. Now, in addition to yourself, who else assisted you in making the investigation in and around Des Plaines?

A. Nobody else assisted me, sir.

Q. Wasn't there two men on the job for awhile?

A. Not to my knowledge. There may have been but I didn't know of it.

Q. Did you use any woman to help in the investigation?

A. No, sir.

Q. How much would you say you spent in lunches and dinners for Mr. and Mrs. Thomasma?

A. I wouldn't know, sir.

Q. Now, you are telling us that there were no payments made in connection with a car?

A. I didn't make any, sir.

472 Q. Now, you made this investigation at Des Plaines and you rendered your reports how often?

A. Why, I would come into the office, oh, once or twice a week, possibly.

Q. And would you render a report in writing?

A. No, sir.

Q. Did you have any notes?

A. Well, I usually made notes, yes, sir.

Q. Do you have any of those notes available now?

A. No, I don't.

Q. Did you give any of those notes to Mr. Wise?

A. I don't believe I did, sir. I think I gave him the information verbally and he made notes himself at that time.

Q. Is it customary as an investigator to rely entirely on memory as to transactions?

Mr. Lindsey: I object, your Honor, not a proper question. The witness can answer as to what his custom is.

The Court: There has to be a limitation as to how far you go.

Mr. Freeman: This is one case we want the court to have all the facts in.

The Court: That is usually the case where a patent
473 lawyer comes in. I think there ought to be some limitation as to how far you go.

Mr. Freeman: I am going to stick pretty much to the text here.

The Court: Suppose you do.

Mr. Freeman: Q. Then you are telling us you made no notes and you rendered no written reports to Mr. Wise?

A. No, I made notes which I carried with me at the time I came to the office. I had notes, notations. Naturally, I did not always remember people's names or various, little items I wanted to remember and I would jot them down on the back of an envelope or a piece of paper which I had in my pocket.

Q. Naturally, you did that with addresses and telephone numbers and things like that, is that correct?

A. Yes, sir.

Q. Did you give those notes to Mr. Wise?

A. No, sir, I don't believe I did.

Q. You are not sure?

A. If I did, it would be an exceptional case where I did.

Q. Did Mr. Wise make any notes when you talked to him?

A. Sometimes he would have a pencil in his hand and jot down information the same as I did.

474 Q. Did you ever dictate any memorandums into a dictaphone?

A. Not to my knowledge.

Q. You merely told Mr. Wise what the expenses you had incurred during the week amounted to?

A. Yes.

Q. How were you paid, by check or cash?

Mr. Lindsey: I object. This hasn't anything to do with it.

Mr. Freeman: I would like to find out.

The Court: What difference does that make, whether he was paid by check or cash?

Mr. Lindsey: It doesn't make any difference, your Honor, whether—

The Court: Objection sustained. Let's have another question.

Mr. Freeman: Q. Did you take any receipt from Mr. Thomasma for the moneys you paid him?

Mr. Lindsey: I object.

The Court: He may answer that question.

The Witness: I don't believe so, sir.

Mr. Freeman: Q. Was Mr. Wise ever with you at Des Plaines in connection with this investigation?

A. I don't think he ever was.

475 Q. And did you have anyone other than yourself at Des Plaines?

A. Not to my knowledge, sir.

Q. You worked entirely alone?

A. So far as I know. I mean—what I mean by that is, if Mr. Wise had other people working, I didn't know of it.

Q. Were you ever in the plant of the Precision Instrument Company, one of the defendants in this case?

A. Yes, sir.

Q. Who did you talk to there?

A. I think I met Larson in there, sir, and also I believe I met Carlson in there.

Q. Did you introduce yourself?

A. I don't remember the circumstances now.

Q. Did you use your own name?

A. Yes, sir.

Q. Did you tell him you were an investigator?

A. No, sir.

Q. What did you tell him?

A. I don't remember, sir.

Q. You have no memory at all with respect to what you told Mr. Larson or Carlson?

476 A. I don't remember exactly what I told them, no; after all, it has been three years ago.

Q. Did you tell him you were connected with or representing some chain store interested in the sale of torque wrenches or automotive supplies?

A. I might have, I don't remember, sir.

Q. Your memory doesn't serve you in that direction?

A. It is very possible I might have done that.

Q. But you do remember the payment of four dollars to Thomasma?

A. I remember that, yes, sir. Now, again, I am not sure of the exact amount. I think it was four dollars. I know I gave him some money.

Q. Do you recall about how many times you were in Mr. Fidler or Mr. Lindsey's office and made reports directly to Mr. Fidler?

A. I don't believe I ever did, sir.

Q. Never made a report at all?

A. I don't think so.

Q. All of your reports were made to Mr. Wise?

A. That is right.

Q. Do you recall taking Mr. Thomasma to Mr. 477 Fidler's office at one time?

A. Yes, sir.

Q. And do you recall the connection, why you were asked to bring Mr. Thomasma from Des Plaines into Mr. Fidler's office?

A. I don't offhand, no, sir.

Q. Do you recall the subject matter of an anonymous telephone call to Mr. Alberts and a letter which you received information about from Mr. Thomasma? Do you recall that?

A. I believe I remember Mr. Thomasma mentioning a letter he had received or mentioning something; whether it was a letter or what it was, I don't remember.

Q. Something about an anonymous telephone call?

A. Something.

Q. Did you report that to Mr. Wise or Mr. Fuller?

A. If I reported it to anybody, it would have been Mr. Wise.

Q. Do you recall making a report in that connection?

A. No, I don't.

Q. Do you recall some eighty-page affidavit that was executed by Mr. Thomasma?

A. I don't believe I ever saw one.

Q. And your memory is quite fixed as to the letter with respect to this anonymous telephone call? You don't recall telling anybody about it?

A. I don't offhand.

Q. Did you meet Mr. Carlsen?

A. Yes.

Q. Where?

A. I met him on various occasions, at a tavern on one or two occasions, a bowling alley, and I am reasonably sure I saw him out at the plant; as a matter of fact, I know I did.

Q. How soon after you started your investigation in 1940, when did you meet Mr. Carlsen?

A. I don't know exactly.

Q. A week, two weeks or three weeks?

A. It might have been.

Q. I think we can save a lot of time if you will just tell us what you did when you started making this investigation. What were you looking for?

A. I was looking to find what information I could about Carlsen and Larson. As the story was given to me by Mr. Wise, as I remember, he said that there was a matter of some claims of a—the patent or the conception of the idea of this wrench that had been made by the people in Des

Plaines, Carlsen, Larson, and I believe Thomasma was mentioned at that time. They wanted me—they asked me to go out and find out all I could about it and that is what I proceeded to try to do.

Q. What did you find out?

A. Well, frankly, I didn't find a great deal. I tried first by checking places where Larson worked. I tried to

find out from those people if they had ever seen or heard of the wench prior to—I don't remember the date now—prior to certain dates before this investigation and I checked the various people that he worked with, people that he worked around and for. I talked to Carlsen. I can't remember all the details of the investigation at this time.

Q. Well, where did you get the names of the individuals for whom Larson had worked in the past?

A. I don't remember, sir. I probably got them by asking questions out at Des Plaines.

Q. You were quite friendly with Mr. Thomasma, were you not?

A. I was toward the last of the investigation.

Q. That is after the month of November, 1940, is that correct?

A. I think it is somewhere along there; just exactly the date, I don't remember.

480 Q. Were you informed by Mr. Wise that Mr. Thomasma had gone to Mr. Wacker and confessed, so to speak?

A. I don't remember that, sir. I remember Mr. Wise telling me Mr. Thomasma had gone to Mr. Fidler.

Q. And did he tell you what happened there? That is, just generally.

A. No, I don't believe he did. He must have told me something about it but just exactly what he told me, I don't remember now.

Q. And from then on there was a more friendly relationship with Mr. Thomasma, is that correct?

A. That is right.

Mr. Freeman: Have you got the original of the Thomasma affidavit? (Addressing plaintiff's counsel.)

Q. I hand you Thomasma's affidavit and will ask you to look at the signature page and will ask you whether you were present at the time Mr. Thomasma signed the affidavit?

(Handing document to witness.)

A. I don't think so, Mr. Freeman.

Q. Do you recall taking Mr. Thomasma to a notary public in Des Plaines for the purpose of having the affidavit you hold in your hand executed?

481 A. I think you are right, yes, sir, now I recall it.

Q. Besides Thomasma, who else was there?

A. I don't remember. I think it was the man's wife.

Q. Thomasma's wife?

A. No, I believe it was the notary public's wife. Now, I remember this.

Q. And would you include in your expense report the notary fee?

A. I suppose I did.

Q. In other words, your expense report got down to such details as 25 cents for the notary's acknowledgment, did it not?

A. I don't think it was—whether it was itemized or not, I don't know sir. I certainly didn't pay it out unless I got it back.

Q. You kept pretty close track of what you spent?

A. Oh yes.

Q. And 25-cent items were kept track of the same as dollar items or five dollar items?

A. I might add 15 cents to it before I got through.

Q. Do you recall who else was present when the affidavit was signed or when you went with Mr. Thomasma to 482 the notary's office?

A. No, I don't sir. In fact, I had forgotten it until you reminded me of it.

Q. Do you recall now how the affidavit got into your hands so you could take it and Mr. Thomasma into a notary?

A. I believe it was given to me by Mr. Wise.

Q. Do you recall someone from Davis, Lindsey, Smith & Shonts' office coming out with the affidavit?

A. No, I do not, sir.

Q. And your recollection is that Mr. Wise gave you the affidavit?

A. I don't remember. I said I supposed I received it from him. I don't remember how I did get it now.

Q. You do recall being present when the affidavit was signed?

Mr. Lindsey: I object to all this.

The Court: I think he has been asked enough about the signing of that affidavit.

Mr. Freeman: Q. Who arranged for you to bring Mr. Thomasma into the office of Davis, Lindsey, Smith & Shonts?

A. I think I answered that. I think Mr. Wise did, sir.

Q. In other words, all of your directions in this case were given to you by Mr. Wise?

483 A. That is right.

Q. Did you receive any directions whatsoever from Mr. Fidler?

A. I don't believe I even talked to him about it, as I recall.

Q. Did you ever have any telephone conversations with him?

A. Not that I remember, sir.

Q. Did you ever report any of the information you obtained by telephone to Mr. Wise?

A. I might have. I don't remember.

Q. Do you know a Mr. Travis?

A. Yes, sir, I think so. Yes, I know I do. I met him.

Q. You met him in connection with this investigation?

A. That is right.

Q. And when was that?

A. That I can't remember, I can't recall exactly. It was during the investigation, I remember.

Q. Did anyone arrange for you to meet Mr. Travis?

A. I think I met him in company with Mr. Thomasma; in fact, we went over to his home for a social call.

Q. That is, you and Mr. Thomasma?

A. And Mrs. Thomasma.

484 Q. And Mrs. Thomasma?

A. And their little daughter.

Q. Do you recall when that was, that is, prior to November, 1940 or during the month of November, 1940 or thereafter?

A. I don't remember the exact date, sir; I don't remember just when it was.

Q. Was there any conversation at the meeting when you went over to Mr. Travis' home with respect to Mr. Thomasma going to Mr. Wacker or going to Mr. Fidler?

A. I don't remember that there was, sir.

Q. What is that?

A. I don't remember that there was.

Q. Was there any conversation between Mr. Travis and Mr. Thomasma with respect to this case?

A. I don't remember.

Q. When I say "this case," I am talking about the Interference.

A. There may have been. I just don't recall it now or what it was.

Q. It was just a social call so far as you can recall?

A. That is right. I had a very good dinner there, too.

Q. Who instructed the notary to put the notarial seal on each of the eighty-four pages of the affidavit?

A. It must have been I. I took it over to him.

Q. And from whom did you receive such instructions if you recall?

A. Any instructions I got in the case at all were given to me by Mr. Wise.

Q. And likewise then you passed onto Mr. Thomasma the instructions that he date and initial each of the eighty-four pages of the affidavit?

A. I must have done so, yes, sir.

Q. Do you recall?

A. No, I don't but if it was done, it must have been at my direction and I must have received the information from Mr. Wise to have him do so.

Q. Did you receive any explanation as to why the notarial seal should have been on each of the eighty-four pages and why Thomasma should have initialed each of the eighty-four pages?

Mr. Freeman: We offer in behalf of the defendants as Defendants' Exhibit 21 the Thomasma affidavit referred to by the witness Baumann.

486 Mr. Lindsey: No objection.

The Court: As I understand, in a patent case, unless an objection is made, the offer is received.

(Said document, so offered and received in evidence was marked DEFENDANTS' EXHIBIT 21.)

Mr. Freeman: That is all.

Mr. Lindsey: No cross-examination.

Mr. Freeman: Mr. Wise.

Mr. Wise: Yes, sir.

Mr. Baumann: Mr. Freeman, do you want me any more?

Mr. Freeman: No, but we are perfectly willing to pay you for your time and witness fees.

(Witness excused.)

487 JOHN A. WISE, called as a witness on behalf of the defendants herein, being first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Freeman.

Q. Will you please state your full name?

A. John A. Wise.

Q. And you operate as The John A. Wise and Son Advisory Counselors, do you not?

A. No, I just operate as John A. Wise. John A. Wise and Son, when I make out a statement, it gives me a great kick out of a wonderful dream I had of building an organization as John A. Wise and Son which never matured. I still have the stationery and I use that to present bills.

Q. Now, each of the invoices you rendered weekly to Mr. Fidler was on the—is under the heading of John A. Wise and Son?

A. Yes, sir.

Q. And you at that time had an office there at 20 East Jackson Street?

A. Yes, sir.

Q. Jackson Boulevard. And you still have on the directory board of that building, do you not, the name 488 John A. Wise and Son?

A. Yes, sir.

Q. And that is just the name under which you operate?

A. Well, I operate under the name of John A. Wise. I hope some day when the war is over to build this organization that that stationery was printed for.

Q. So, you operate as an individual?

A. Yes, sir.

Q. Do you have anyone associated with you in that business?

A. No, sir.

Q. And how long have you been in the business of being an advisory counselor?

A. Well, I have been with the firm of Davis, Lindsey, Smith & Shonts; I have been doing work for them since 1925.

Q. And going back to 1925, did you then operate under the name John A. Wise & Son?

A. In 1925, I was with the Burns Agency as a field

superintendent, selling service and took quite a large patent case for Mr. Lindsey and from that time on I did all of their work and worked principally all of my time for them.

Q. And you operate under the name of John A. Wise & Son?

A. No.

489 Q. When did you start operating under the name of John A. Wise & Son?

A. I started operating under the name of John A. Wise & Son, I believe, about 1933, I think.

The Court: May I inquire what difference it makes whether he operates under that name or not? He says it is merely a trade name. Does that have something to do with this case?

Mr. Freeman: No, I don't say that that would alone.

The Court: Let's get on to something else then.

Mr. Freeman: I am trying to go along as fast as I can. I am trying not to take any more time than absolutely necessary.

Q. Prior to Friday morning of last week, you had never met me?

A. No, sir.

Q. You had never talked to Mr. Ooms or any of the people referred to in connection with Mr. Baumann's testimony?

A. No, sir.

Q. Ever meet Kenneth Larson?

A. No, sir.

Q. Ever meet Walter Carlsen?

A. No, sir.

Q. Did you make any investigation at Des Plaines?

490 A. No, sir.

Q. That was carried on by Mr. Baumann alone?

A. Why, most all of the Des Plaines work was carried on by Mr. Baumann alone. There were occasions when I had something I wanted to find out later in the case where I used another man. He probably knew nothing about it. He didn't know anything about it.

Q. Who else did you use? Will you give us the name of the individual?

A. As near as I can recall, the man I used was—I will recall the name. I can't just recall it right now, sir. He is a sailor in the United States Navy but I will recall the name.

J. Q. You started on this Automotive-Precision investigation early in August, 1940, is that correct?

A. That is correct, sir.

Q. And your memory is refreshed from the invoice that I hand you, is that correct (handing paper to witness)?

A. That is correct.

Q. That is a photostatic copy, of course.

A. Well, that don't even improve my eyes, I have got to get specs. Yes, those are my invoices.

Q. And are they in your handwriting, while you 491 have them in your hand?

A. Yes, sir.

Q. I take it you do not have any stenographic force or any stenographers?

A. No, sir.

Q. Now, will you tell us in connection with this investigation what pretext you set up?

A. When I am given a case by anyone of the—for instance, we will refer to this case.

Q. That is all I want to know, in connection with this case.

A. I was called into Mr. Fidler's office and he told me he had some work he wanted me to do. It had to do with an Interference in the Patent Office; that the Automotive Machinery Corporation, I believe is the name, made a wrench with a gauge or something on it; that one of their best customers was a firm in Kenosha by the name of Snap-On; that Precision—that Automotive had lost that contract, principally all of the business, and that a firm in Des Plaines was now making that wrench and that the Des Plaines firm; one of their men was the holder of the patent that was in Interference.

I was given the name of Larson as an officer of that company and the owner of the patent and a man by the 492 name of Thomasma who was formerly connected with the Automotive Company and had something to do in the engineering division with the building of a similar wrench.

He asked me to find out the facts if I could as to—he gave me some dates I made notes of, I don't remember them now.

Q. Were you given any memorandums or written reports by Mr. Fidler—

A. No, sir.

Q. (Continuing.) —so that you might start your investigation?

A. I made—what necessary notes I wanted, I made myself.

Q. Now, I hand you some documents which have been marked for identification Defendants' Exhibit No. 13, and will ask you to look at them and tell me whether or not they were shown to you or given to you by Mr. Fidler at the outset in connection with your investigation?

A. No, sir, no notes were given to me or nothing written at all, sir.

Q. Will you look carefully at the last four pages and then give us your answer as to whether any notes or memorandums were given to you?

A. The last four pages. One, two, three, four. I will have the last one here in a minute. (Dropping papers.)
493 Nothing like that was ever given to me. It looks like something I gave them, that is, told them. I don't remember getting any such stuff.

Q. Well, now, will you go on and tell us what a pretext is?

A. Well, as I explained, when they called me in and told me what information they would like to find out, if possible, that was probably given to me—might have been; I don't recall exactly—might have been two weeks or three weeks, maybe four weeks before I started the investigation. I went on my own initiative. I may send a man. I may send a woman. I may send two, send them out to the vicinity. That would in that case be Des Plaines. I would want to know just what that company was. I would want to know who Larson was and who Carlsen was. I would want to know what their hobbies were, how they lived, and all about it.

When I learned all of that, from that I would form a pretext.

A pretext may be the arrangement of sending a man there as a real estate operator. I may send him there as a representative of a machine corporation. I may send him there as a whiskey salesman if their inclinations are to be tavern people. I may send him as a golf instructor if their hobby is golf. If their hobby is trapshoot-
494 ing, I may send him as a trapshooter.

In building a pretext—when I say pretext, there are a lot of times through a lot of reports when I say expense and pretext.

Pretext may be a man having to spend some money going to a real estate man and finding out about property and use that in order to ask questions in order to get information and from the time I spend in getting ready to start the case and knowing just exactly where I stand before I start, I charge a fee for that, sometimes anywhere from two, three, five hundred dollars, or whatever it happens to be, whatever I have incurred, what I have used and what I think I am entitled to.

Q. Then the pretext doesn't necessarily cover an expense or cash out?

A. Yes, it does.

Q. How do you distinguish as to what is cash out in connection with a pretext and what is in connection with services?

A. Well, services are the days a man puts in. That is charged at a specific rate per day. Expenses, such as hotel, meals, incidentals, there would be laundry, all the expenses a man would have, that would be expense.

Then we would have expense we would call a pretext where a man would have to go out of his general line of investigation to get some information he needs or some information to carry out—how should I say it—a front or pretext he is using to make the other fellow believe, as Will Rogers would say, he is something he ain't.

Q. What was the pretext set up in connection with the investigation of Precision and Kenneth Larson, this specific case?

A. I don't remember exactly. It seems to me he went out as a real estate man at one time, as a machinery representative. I don't recall just exactly what that was.

Q. Every time the man went out and spent a day, that was a service charge?

A. Yes, sir.

Q. Whatever his expenses were for that day, that would be expense?

A. Yes, sir.

Q. Tell me what brought about the expenditure you call "pretext"? He has been paid for his services and he has been paid for cash and expenses. I am still trying to find out what you mean by "pretext."

496 A. I thought I explained that to the best of my ability.

When we want to find information from a man, we have to do it in a way that is not going to injure the man or injure any of his reputation, if we happen to talk to his neighbors. We have to prepare our man to represent himself as something honorable and legitimate, whether it be an insurance man or automobile man or some other particular thing, so if questions are asked of the friends of this man, there will be reflection on the man himself.

That would entail probably of me using another person for an hour or three or four or incurring some extra expense, which we term as a pretext.

Q. You do that at the outset or start of the investigation?

A. I myself thoroughly know the lay of the land before I start any case. That is done before I ever start.

Q. And does the pretext continue then?

A. No, sir.

Q. It stops?

A. A pretext will continue, a pretext will probably continue through an entire case but it will probably be changed dozens of times.

Q. And you continue to charge for this pretext 497 from time to time?

A. We charge expense and a pretext, yes, sir.

Q. And the first expense item or an expense item of August 17, 1940, appearing on your invoice reads as follows:

"Expense and pretext up to and including August 17, 1940."

Are you now telling us that the expense of \$557.85 was spent between the 10th of August and the 17th of August, 1940—

A. No, sir.

Q. (Continuing.) —in setting up this pretext?

A. No, I explained at the outset just how that—what might have taken two or three weeks before this thing occurred.

In small amounts like this, I sometimes finance it myself and won't collect until the case is started.

I probably worked or rather had work done maybe three weeks, maybe four, before the case started in order to find out where I was at.

Q. Do you have any records that would tell you when you first started on this job?

A. No, I haven't, sir. I keep no records whatever.

Q. You keep no diary?

98 A. No, sir.

Q. How do you charge for your time?

A. Fifteen dollars a day.

Q. I mean how do you keep track of your time?

A. It is kept track of from week to week.

Q. Every week cleans up and that is all there is to it?

A. Every week cleans up.

Q. You keep no records of what you did last week and the week before?

A. No, sir.

Q. Is there any reason for not keeping any records?

A. Well, I won't say there is any reason for not keeping them but I won't say there is any reason for keeping them. I do work for only one concern. I see them every day, practically.

Q. Is there any inquiry on the part of your clients or patron or customer as to what the expense covers?

99 A. No, sir.

Q. You just rendered the invoice for \$557.85 expense and it was paid?

A. It was paid, sir.

Q. And that is true with respect to each of the 499 voices that we have here?

A. That is correct, sir.

Q. And there was a sum total paid you for expense, pretext and services amounting to forty-seven hundred dollars and some cents and you have no records?

A. None whatever.

Q. And you never rendered any written report of any kind to the attorneys for Automotive?

A. No, sir.

Q. And you never rendered any written report of any kind to Automotive?

A. No, sir.

Q. The only thing in writing that either Automotive or its attorneys received from you were these invoices?

A. That is right, sir.

Q. And the only thing you received from either Automotive or its attorneys was a check in payment?

A. Each week.

Q. That is the sum and substance of the written documents that were given by you to the attorneys or to

Automotive and given by the attorneys or Automotive to you?

A. That is true.

500 Q. These checks and invoices?

A. That is correct, sir.

Q. Do you receive any memorandums from your investigators—from Mr. Baumann in this case?

A. The only memorandum I ever receive from Mr. Baumann would be on a Monday morning when he would report in the office which is when I paid him. He probably would have a slip showing his expenses and time put in. I would pay him cash and that was the end of that transaction.

Q. And you have no way of knowing whether the expense of \$64.70 included on your August 31st statement covered Mr. Baumann's actual expenses or covered the pretext or what it covered, you have no way of knowing?

A. Well, I have been in this service so long I kind of have an old maid's intuition. I can pretty near tell whether the expenses are right.

Q. You can tell the expense for seven days is \$64.70 and over there for another seven days \$196.80?

A. I can't exactly tell but I can tell within a reasonable amount whether his expenses are right.

Q. It wouldn't make any difference whether the expense for one week period was \$196.80 or \$64.70?

501 A. Not a bit in the world because I would know what services he had rendered.

Mr. Lindsey: I object.

Mr. Freeman: Q. Service is one thing. I am trying to find out with respect to your pretext and expense and I am trying to find out just what took place and you are now telling us that as a result of an old maid's intuition you could tell whether the expense account was accurate or not?

A. After the man tells me what he found. In some of these instances, he probably left Des Plaines and came to Chicago. He probably made other trips around. He probably had to hire a cab. He probably had to use transportation. He probably had to talk to janitors or something of that sort. Well, we may use a janitor in a building to find out certain information about certain people in it or stuff of that kind, but the expense, when it is turned in, I know whether it is legitimate or whether it isn't, within a reasonable amount, sir.

Q. Would you look at the invoice of November 30, 1940 for services for two men, one week, \$180, and then tell me what is meant by the expense item of \$113.95? It is in your handwriting?

A. Sure, but I don't remember exactly just what 502 that covered. I know—well, it states here, "Expenses and pretext, lunches, and pay given to Mr. and Mrs. Thomasma."

What was the period of time, I won't say whether this is the time, there was a period of time there when I kept a man continuously, you might say, guarding Mr. Thomasma.

503 Mr. Freeman: Q. And who was that man?

A. Mr. Baumann.

Q. Well, his time is included on that statement.

A. His time is included on that statement. Then apparently I used—I am trying to think; your Honor, would it be a breach of court or anything, Mr. Baumann, if I asked him the name of a man.

The Court: Go ahead and ask him.

The Witness: Bill, down by the pier.

Mr. Baumann: Stanke.

The Witness: Yes; William Stanke; he is now in the United States Navy. I used him considerably on a lot of stuff.

Mr. Freeman: Q. Is that the reason why mention is made in that particular invoice, services for two men, \$180.00?

A. Yes, sir; and that would be the expense of both men included.

Q. What about—isn't there the word car and storage?

A. Yes.

Q. Now, Mr. Baumann had no car; what storage was there, do you know?

A. Yes, I do; he paid storage on Mr. Thomasma's car. They put it in a parking lot, and I think there was a 50 cent storage charge; and he paid that.

504 Q. And was that item included in the expense report that was given you by Mr.—

A. I believe he bought some gasoline.—Yes, sir; I believe he bought some gasoline on the way down, and that is included.

Q. What else is included?

A. Lunches, I believe; and I believe some pay that he

gave Mr. Thomasma; I do not recall whether it was Mr. and Mrs. both; I think one time they each got paid a half day for going down.

Q. Do you know why it was necessary to pay Mrs. Thomasma?

A. She was working.

Q. For whom?

A. I don't know; my understanding is that she was working at that time.

Q. Now, why was it necessary to have a guard for Mr. Thomasma?

A. Well, as I understood it, Mr. Thomasma feared that he might be injured in some way; he might be attacked, or his home might be hurt, or he might be hurt. I believe he could tell you more about that than I can.

Q. You were not hired by Mr. Thomasma?

A. No, sir.

Q. He was one of the individuals that you were 505 investigating; is that correct?

A. That is right.

Q. Who asked you to guard him; so to speak?

A. Mr. Fidler, at Mr. Thomasma's request, as I understood it.

Q. Mr. Fidler gave you those instructions?

A. Yes, sir.

Q. How often would you report to Mr. Fidler as to what had taken place?

A. I would see Mr. Fidler every day, sir.

Q. Every day; and give him a report every day with respect to what information you were receiving from Mr. Baumann?

A. Which as I recall it now is one of the worst things I had to do; because this case, we failed to do very much; my main report was nothing.

Q. You gave him no information?

A. We just could not find very much of anything.

Q. You kept right on, and increased the number of men towards the tail end of the investigation?

A. Yes. After Thomasma—we had not done anything at all, much; I stepped into Mr. Fidler's office one morning, and he greeted me with the fact that I was a pretty rotten investigator; that what I was trying to find out, 506 the man came out to his home and told him.

Q. What were you trying to find out?

A. I was trying to find out just who might own this patent, if Precision did not; did anybody else have anything to do with it; did Thomasma have anything to do with it; what were the facts of the Precision.

Q. And Mr. Fidler told you that Mr. Thomasma had gone out to his home and given him the facts?

A. Yes; and then I told Mr. Fidler, I said, "Well, I guess my services on this case are over." He said, "I should say not; your services have just begun."

Q. Go ahead and tell us what he then told you.

A. Well, he said, "Your services have just begun." I said, "The man has told you the story." He said, "Well, I do not believe his story any more than I do anybody else. Now it is up to us to check his story and see if it is true." Which we did.

Q. You checked his story?

A. Yes, sir.

Q. What did you find?

A. Well, the more we checked, the more it looked like the other side had the edge on us.

Q. What do you mean the other side had the edge?

A. Well, we checked different people, that we either
507 could not find them or—

Q. Well, you checked somebody and didn't find them; you didn't get any information?

A. We checked some foundry, as I recall it. It seemed that his information was just what the other side said it was. We checked some garage man out near Des Plaines; his reaction was that the other side, what they had stated was true, the dates, or something of that sort. I just could not bring in much of value to Mr. Fidler; I never could bring anything that satisfied him.

Q. You yourself never went out to this plant?

A. No, sir.

Q. Did you ever go to Woodstock?

A. No, sir.

Q. Did you ever go to the Automotive plant?

A. No, sir.

Q. Did you ever talk to Wacker?

A. Never saw Mr. Wacker but once, and that was in Mr. Fidler's office, and that for a few minutes.

Q. All of your work was done by Mr. Baumann and these other individuals that you picked up occasionally?

A. Correct, sir.

Q. What was your job in this connection; what did you push?

508 A. I merely acted as an advisor, and handled the case itself. That is, a lot of times I decide a case is not worth investigating, and do not make investigation. In this case, as I told you, I looked into it, I tried with every possible means to find true facts, which I was practically unable to find.

Q. You were the go-between?

A. That is right.

Q. Between the investigator that you hired and Mr. Fisher?

A. That is right, sir.

Q. And you were the one that a few moments ago said that you had to be satisfied at the outset, before you set up the pretext in order to get the information you wanted?

A. That is right, sir.

Q. Now, can you tell me what you personally did to satisfy yourself in order to set this pretext and start the investigation?

A. I didn't do anything, sir; I just looked into the matter, by sending people to find out, as I explained in the start, who Larson was, and Carlsen was, and Thomasma was; just what their habits were, and all about them. Then

I sent a man out to check around, to see if he could
509 find any person, or any person that could tell us anything, that could tell us anything that would lead these two people, that the dates they gave were not correct, or were correct; it doesn't make any difference to me whether it is right or wrong, it is just what is.

Q. And you sent Mr. Baumann out?

A. I did.

Q. Whom did you send out before you put Mr. Baumann on the job?

A. I do not recall who I had check it. I seem to recall using a man by the name of Nogger; I had a young fellow that is now an engineer in the Army. This man Stanke, now I want this understood: This man Stanke that I am referring to, and when I refer to the name of Nogger, that is the man I believe, Nogger,—on investigation I could find; I think they could be found. I am not using names that are just coming up; I am not sure whether I used Mr. Stanke or Mr. Nogger out there, sir; I don't know just which I use.

Q. Now, this service charge on here, on these invoices, that was for Mr. Baumann's time?

A. Yes, sir.

Q. How about your service charge?

A. Seven and one-half of that goes to me.

510 Q. Half of that goes to you, and half went to the other individual?

A. The investigator.

Q. So that when you say services up to August 17th, 1940, \$90.00, that covered yourself and occasionally Mr. Baumann?

A. Yes, sir.

Q. Whenever you had the services of some one else, you put that in under pretext?

A. No; no, you will notice where I used two people and charged for them, I charge \$15.00 a day for each person; I charge \$90.00 a day, and therefore make \$15.00 out of it. The Court: \$90.00 a week.

A. A week; I am sorry.

Mr. Freeman: Q. You didn't have the use of two people until along late in November and December.

A. That is right.

Q. I understood you to say a few minutes ago that this pretext, or setting it up, or finding out to satisfy yourself, that you used this man Stanke.

A. That is under the charge that I made, of partial retainer, \$500.00; that covers that.

Q. Oh, we now have a retainer for \$500.00.

511 A. Well, whatever you want to call it; just pick out your word, and it will be that. It is money that I received, sir.

Q. I am not trying to quarrel;—

A. No, whatever you wish to call it. I received \$500.00, and that covered my time and expenses, or what persons I might use before I start in the case.

Q. And that is called pretext?

A. I use that word, sir; it could be called retainer; it could be called that.

Q. However, when you in November and December began using two people, you then charged for services of two people; that is \$180.00?

A. I started charging for people the minute I started the case officially.

Q. Mr. Wise, did you ever send a man up to Woodstock?

A. I do not recall ever sending one.

Q. Were you ever informed by Mr. Fidler that you should investigate Mr. George B. Thomasma?

A. That I should investigate?

Q. Yes.

A. Yes, sir.

Q. And were you given any of the reasons why Mr. Thomasma had been discharged on June 5, 1939, from the Automotive?

512 A. No, sir.

Q. He just told you to investigate him, and nothing else?

A. They told me to investigate him and his connection with Precision.

Q. And when did you last talk to Mr. Fidler about this case?

A. A week ago, I believe.

Q. At the same time that Mr. Baumann was present?

A. No, I think I talked to him a day or two after that, sir.

Q. Do you work pretty much out of that office, Davis, Lindsey, Smith & Shonks?

A. Continuously, sir.

Q. And you are there every day?

A. Yes, sir.

Q. Do you have any office space there?

A. No, sir.

Q. And when did you talk to Mr. Lindsey last?

A. Oh, I think the last time I talked to Mr. Lindsey is when he—the last time I talked to Mr. Lindsey anything about this particular case is when he told me that you wanted to see me to question me on some reports, or something.

513 Q. And at that time I asked you whether you had any records, and you told me you had none?

A. That is right.

Q. And I then asked you if you would appear before his Honor Judge Igoe on Tuesday and tell the Judge the same thing?

A. That is right, sir.

Q. And you did not make any search for any records at all?

A. Well, I have no place to search, sir, outside of a brief case in which I carry some stationery. I keep no records of any kind.

Q. The only stationery you really carry is your invoice stationery?

A. That is right; my pets.

Q. That is, your invoice stationery?

A. That is right; because I work for only one place.

Q. During the period of the investigation; that is, between early in August, 1940, and January, 1941, did you talk to Mr. Lindsey?

A. No; Mr. Lindsey, I had nothing to do with in this case.

Q. All of your conversations were with Mr. Fidler?

A. Yes, sir.

514 Q. By the way, when you made your reports to Mr. Fidler practically each day, was that taken down stenographically?

A. No, sir.

Q. Was any one else present, outside of Mr. Fidler and yourself?

A. Not to my knowledge, sir.

Q. Were any notes made?

A. I have tried to recall of him making notes; I do not recall of him making any notes. He might have taken a pencil and made a note or two. I do not recall it, sir. Because there was so little obtained, so much work trying to obtain and no results for weeks and weeks.

Q. Who told you that there were no results obtained?

A. Well, I did not get the results from the investigators, so there wasn't any.

Q. And they kept right on investigating?

A. Trying, yes.

Q. Week after week?

A. Week after week.

Q. So that the sum and substance of the \$4700 expenditure is nothing more than word of mouth, with respect to any reports of any kind?

A. That is right, sir.

515 Q. And the sum and substance of the investigation was practically nothing, as far as you are concerned?

A. Very little of any value, sir.

Q. Had you discussed that recently with Mr. Fidler, about the results that you obtained in relation to this investigation, made some three years ago?

A. No, sir; the only things Mr. Fidler told me was to use my memory and tell whatever I was asked, to the best of my ability.

Mr. Freeman: That is all.

Cross-Examination by Mr. Lindsey.

Q. Mr. Wise, you first had talked with me about 1925, did you not?

A. Yes, sir.

Q. And do you recall about that time I was involved in a great deal of litigation, involving the Motor Meter, and I was representing New York counsel.

Mr. Freeman: That is objected to. We concede that he met him in 1923; and there isn't any question about it.

Mr. Lindsey: May the Court please, I am only going to ask a very few questions of this witness, and they all have to do with this matter of not rendering reports; 516 and all of these questions, the questions Mr. Freeman directed, it relates directly to that subject.

Now, will you please read the question?

(Question read by the reporter.)

The Court: The objection will be overruled.

Mr. Lindsey: Q. Will you answer the question, please, Mr. Wise.

The Witness: A. Yes, sir.

Q. And do you recall that at that time I told you that I had a number of other investigators who had been working on several of these cases, some of which had to do with the counterfeiting of the Motor Meter; and that I objected strenuously to these long detective reports as to what time they got up in the morning, what they had for breakfast, and how they trailed the suspect, or the object of their investigation; and I didn't want to pay for that kind of report; do you recall that?

A. I do, sir.

Q. And you have conducted quite a few investigations for me in the last eighteen years, have you not?

A. Yes, sir.

Q. And you have purchased some patents for my firm, have you not?

A. Yes, sir.

517 Q. And you have done some investigating on Mr. Fidler's work, have you not?

A. Yes, sir.

Q. And on Mr. Frank Parker Davis' work, have you not?

A. Yes, sir.

Q. Now, during these past eighteen years, what has been your practice about giving me written reports?

A. I didn't give any; I came in and told you the facts.

Q. And if I wanted any report to send to the client, what would I do?

A. Call in a stenographer and sit down and dictate it from what I told you, write a letter—

Q. Pardon me; were you finished?

A. Yes; I said you would write a letter.

Q. Now, with respect to these invoices, it has been your practice for the last ten years, we will say, with respect to making out invoices to our firm, or members of the firm for whom you have done work?

A. Why, I just make out the invoice and take it over and walk into your office, and pull it out of my pocket and say, "I have the invoice here for last week." You look at the amount and say, "Go to the cashier with it."

Q. And do you know of any occasions when I, in particular, have told you to go ahead and take it to the 518 bookkeeper, that I was not even going to examine it?

A. You always do that, sir.

Q. Without even looking at the amount, at times?

A. Yes, sir.

Q. Did I ever tell you that I had implicit confidence in your integrity and honesty, as to these services and expenses which you invoice me for?

A. Yes, sir.

Q. Did we ever complain about any of your invoices; did I,—the size of them?

A. Well, I am under oath; I guess I will have to answer the truth: You have complained sometimes about them being too low.

Q. And you see me very often in the office, do you not?

A. Every day.

Mr. Lindsey: That is all.

Redirect Examination by Mr. Freeman.

Q. Did Mr. Fidler ever complain about any of the invoices that you rendered in this case?

A. No, sir.

Q. Did he ever tell you that the Automotive Maintenance were complaining about the expense that this case was running into?

519 A. No, sir; he never told me that.

Mr. Freeman: That is all.

(Witness excused.)

Mr. Freeman: We offer in evidence as Defendants' Exhibit No. 26, a series of invoices of John A. Wise, starting with August 10, 1940, and ending with January 4, 1941.

The Court: There is no objection; they may be received. (Said invoices, so offered and received in evidence, were marked DEFENDANTS' EXHIBIT NO. 26.)

Mr. Ooms: Mr. Krichiver, will you please take the stand?

520 DAVID M. KRICHIVER, called as a witness by the defendants, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Ooms:

Q. Mr. Krichiver, will you please state your name?

A. David M. Krichiver.

Q. What is your address?

A. My office address is 139 North Clark Street, Chicago, Illinois.

Q. You are an attorney at law?

A. Yes, I am.

Q. Do you recall in November and December, 1940, that you represented George M. Thomasma?

A. November, 1940?

Q. Yes.

A. Yes, I do.

Q. I want to call your attention to a meeting at the home of Mr. Fidler on a Sunday evening in November, 1940; do you recall that meeting?

A. Yes, I do.

Q. Do you recall the date of it?

A. That was November 3, 1940.

521 Q. How did you get there?

A. By automobile.

Q. Well, who arranged for it?

A. I remember that date particularly, because that was the date my cousin was being married. Early that day I received a phone call from my client—

Q. That is George Thomasma?

A. That is right;—saying that he wanted to have a meeting at the home of Mr. Fidler at 5:00 o'clock that evening. Well, that hour conflicted with the wedding arrange-

ment. And I told my client that it was not convenient for me to be there at that time, and that I would arrange another hour.

I made several telephone calls; I arranged that meeting after 8:00 o'clock that evening.

Q. Whom did you call to reset that meeting?

A. Oh, I made a series of calls; I spoke to Mr. Fidler, and I spoke to my client.

Q. Had you previously talked to Mr. Fidler?

A. Yes.

Q. When?

A. I had spoken to Mr. Fidler in his office some time prior to November 3, 1940; I do not recall the exact date.

522 Q. About how long before November 3?

A. Oh, it was a short time; within maybe two weeks, three weeks; possibly a month. I do not recall.

Q. What was the subject of your conversation at that time?

A. The first time, or at Mr. Fidler's home?

Q. At his office; the previous time.

A. At his office—the first time I was at Mr. Fidler's office I tried to sell him or his client some stock that my client owned in the Precision Instrument Manufacturing Company.

Q. How many shares of stock did you have?

A. My client, I think, owned 260 shares of stock.

Q. You also had five shares at that time, did you not?

A. Yes.

Q. Did you try to sell yours also?

A. Yes, that would have been included.

Q. And what inducement did you offer them to buy that stock?

A. Inducement,—there wasn't any special inducement for the purchase of the stock; I thought it was of value to them, because I knew they were having some trouble with Precision Instrument.

Q. Did you know the nature of that trouble?

523 A. I know it involved a patent matter, but what it was, I didn't know exactly.

Q. Did you know Mr. Thomasma's connection with that matter?

A. Oh, yes.

Q. What was his connection?

A. His connection with the Precision Instrument Company was a stockholder; and he was on the outside, trying to get in; but Mr. Kenneth Larson and Mr. Walter Carlsen of the company were keeping him out.

Q. Did you know his connection with the patent matter, which you say you knew was in controversy between Fidler's client and your client?

A. Well, I knew of it; I don't know how else to explain it.

Q. Did Thomasma tell you the facts?

A. Well, he told me when he first came to me and we had our interview at my office, he gave me the historical background of his connection with the Precision Instrument Company.

Q. How long before these meetings, or this meeting in November, was that?

A. Oh, I think that was maybe February, March, April of 1940; I don't know.—I have my file here Judge, if I 524 can look at that I may recall.

The Court: Go ahead.

The Witness: I do not have my diary here, though.

Mr. Ooms: Q. Look at the documents.

The Witness: A. It was prior to April, 1940; because on April 17th, 1940, I wrote him saying that he had been in my office a short time ago to consult me about Precision Instrument Company; asked him if there had been any new developments, and if so, to advise me. That was April 17th, 1940; so that shortly prior thereto he was in my office for the first time.

Q. And then did you subsequently procure this five shares of stock that you own?

A. Yes.

Q. And you attended a stockholders' meeting in the summer of that year, did you not?

A. Yes, I remember that very well.

Q. Now I want to bring you to about the time of November 3; did you voluntarily call Mr. Fidler, or did somebody send you, or did Mr. Fidler call?

A. No, I called Mr. Fidler.

Q. At whose suggestion?

A. That was because my client was going to have this meeting at 5:00 o'clock, and wanted me there; and I 525 could not make it, so I called Mr. Fidler.

Q. That was on Sunday, November 3?

A. That is right.

Q. Or Saturday, November 2; one of the two?

A. No, that was Sunday, November 3.

Q. The earlier meeting you had with Mr. Fidler, how was that arranged for?

A. Well, I had written a letter to Mr. Wacker at Automotive, asking if I could have a meeting with him.

Q. Do you have a copy of that letter there?

A. I am looking for it now; yes, that was on June 17th, 1940.

Q. May I examine this?

A. Surely.

Mr. Ooms: May I read this into the record, your Honor, —and the witness can keep his file straight.

The Court: Go ahead.

Mr. Ooms: "June 17, 1940. Automotive Maintenance Machinery Co., 2100 Commonwealth Avenue, North Chicago, Illinois: Attention Frederick G. Wacker, Gentlemen:

"I am interested in Precision Instrument Manufacturing Company at Des Plaines, Illinois. I understand that you are also interested in the same concern.

"I would greatly appreciate your arranging a meeting between my self and one of your executive officers, preferably your president. Kindly advise me. Respectfully yours,"—

Q. At whose suggestion was that written, Mr. Krichiver?

The Witness: A. Oh, I do not recall anybody making a suggestion that I write to Mr. Wacker. I was attempting to dispose of my client's stock in the company, and I had an idea that Mr. Wacker would be a prospective purchaser; so I wrote that letter.

Q. Why did you think he would be a prospective purchaser?

A. Well, on our conversations, between my client and myself, I knew that both AMACO and Precision were making wrenches, and that Automotive was attempting to knock out this Precision wrench. And I tried to sell the stock to them, so that they could become stockholders in the corporation and would know what was going on.

Q. Had Thomasma told you what the situation was with respect to the Larson Patent Application of the Precision Instrument Company?

A. Will you repeat that?

(Question read by the reporter:)

A. Oh, it had been mentioned in our conversations, but he was not an attorney and didn't know what the situation was. I got no information from him as to what the status of the proposition was.

527 Q. Did he tell you the status as to who invented that wrench, and things of that kind?

A. Oh, he told me he claimed to be the inventor of it.

Q. Did he tell you anything about the Interference in which it was then involved, with Automotive?

A. No, he never used the word Interference; I don't know that he knew what it meant.

Q. Did he tell you anything about the fact that Larson and his associates were claiming that it was invented in 1934, whereas in fact it was invented later?

A. Did he tell me that?

Q. Yes.

A. I don't think so; I don't think he ever told me anything about it.

Q. What reply did you get from Automotive, or Mr. Wacker, to your letter of June 17th?

A. I received a reply from Mr. Wacker's secretary telling me that Mr. Wacker was out of town, and that he would contact me later.

Q. May I see that a moment?

A. Yes.—What was the date of that other letter?

Q. June 17th, 1940.

A. Yes; here it is. (Handing document to counsel.)

Q. Now, what occurred after you received the letter from Mr. Wacker's secretary, telling you of his absence?
528 since?

A. If I remember correctly, I got a telephone call.

Q. From whom?

A. From Mr. Fidler.

Q. What was said?

A. I think at that time—this is to the best of my recollection, Judge; it has been so long ago—I think he advised me that he represented Mr. Wacker, and we arranged for an appointment at his office.

Q. And you went to his office?

A. That is right.

Q. Do you know when?

A. I don't know the exact date; it was shortly after June 18th, 1940.

Q. And tell us as nearly as you can your conversation, when you went to his office in response to his telephone call.

A. Well, at his office, meaning Mr. Fidler's, I offered them this stock that my client and I owned in Precision Instrument. I thought it would be to their best interests to own this stock; I thought it was a good investment for them.

Q. Had you ever been paid any dividends on it?

A. No.

Q. Did you know anything of the financial condition 529 of the company?

A. Yes, a little bit, I think. Because I had a statement—Now, I don't know whether this had been sent to me; I think this was given to me when I first talked to the client.

Q. Never mind the financial statement; but when you went to see Mr. Fidler, presumably some time in June or July, 1940, did you have any information as to the financial condition of Precision?

A. As I say, I had the financial statements; one is a condensed balance sheet, and the other is a condensed statement of profit and loss, which were issued by the Precision Instrument Manufacturing Company.

Q. Did you discuss those with Mr. Fidler?

Mr. Lindsey: I am going to object, your Honor; I don't think this has anything to do with the question of perjury, or compounding of perjury.

Mr. Ooms: I think we are getting right at the—I am trying to get in as to what the conversation was on that date.

The Witness: A. What date did I say it was, shortly after we had a meeting?

Mr. Ooms: Q. Shortly after June 17th.

A. June 17th; prior thereto I had taken an account- 530 and out to Precision Instrument Manufacturing Company, and we had made an examination of the books and records.

Mr. Ooms: Q. And when you say Mr. Fidler, when you saw Mr. Fidler, did you discuss the financial condition of Precision?

A. I do not recall.

Q. What did you tell him about the stock?

A. Conversation verbatim?

Q. No, in substance.

A. I do not recall whether I asked him for a definite

price or not; I asked him if they were interested in acquiring the stock that we had, and they were not.

Q. Did you tell him anything about Thomasma?

A. About him owning stock?

Q. Yes.

A. No, I did not disclose the ownership of that stock at that time.

Q. Did you tell him that you represented Thomasma?

A. I do not recall; but I don't think so.

Q. Did you discuss his so-called patent matter, that you knew they were involved in with Automotive?

A. I don't know; we might have. I don't know.

Q. What inducements did you offer him to purchase either your stock or the 260 shares of Mr. Thomasma?

531 A. As I recall now, the only inducement offered to him for the purchase of this stock was that he could be a stockholder in the corporation.

Q. And thereby find out what was going on?

A. He could do whatever he wanted with it after that; it was no concern of mine.

Q. What reply did he offer, to the sale of the stock?

A. They were not interested.

Q. Did he tell you they were in legal difficulties with the Precision at that time?

A. He might have; I don't know. I don't remember.

Q. And when did you next hear from Mr. Fidler or Mr. Wacker, or anybody connected with Automotive?

A. I don't think that I had talked to Mr. Fidler again, or anybody connected with Automotive, until that November date.

Q. November 3, the Sunday evening?

A. Yes; I think that is correct, now.

Q. Did you exchange any correspondence with them?

A. Prior to November 3?

Q. Yes.

A. I don't think so. If I did, I would have it in my file.

Q. Your file is complete, that you have before you?

532 A. Yes; everything that I have in connection with this matter is right here.

Q. You find no further correspondence of the character I indicate?

A. No, I do not. All my dealings thereafter were with the Precision Instrument Manufacturing Company.

533 Q. Mr. Krichiver, when we closed this morning we were getting to that meeting of November 3rd, 1940.

at Mr. Fidler's house. When was the first time you learned that that meeting was to be held?

A. Oh, some time early that Sunday afternoon or morning, I don't recall which.

Q. You had an appointment the previous day, November 2nd, with Mr. Harry Alberts, did you not?

A. You say November 2nd?

Q. Yes.

A. 1940?

Q. Yes.

A. No.

Q. You had made an appointment with him for a Saturday afternoon at two o'clock, had you not?

A. Yes.

Q. What Saturday afternoon was that?

A. That was Saturday, November 9th.

Q. The following Saturday?

A. That is right.

Q. And that appointment was never kept?

A. I called Mr. Alberts' office and told him that we 534 were not coming in.

Q. When did you call him?

A. I think it was on Saturday, November 9th.

Q. A little after the time for the appointment to be kept, wasn't it?

A. I don't think so. No.

Q. Why was it cancelled?

A. My client called me and told me he couldn't come in.

Q. The first you heard then of the November 3rd meeting was on that day?

A. That is right.

Q. And Mr. Thomasma picked you up at the wedding toward eight o'clock and drove you to Mr. Fidler's home?

A. That is right.

Q. What time did you arrive there?

A. It was approximately eight o'clock, I don't recall.

Q. Who was there?

A. Well, there was myself and my client, Mr. Thomasma. Mr. Fidler was there, Mr. Wacker was present at the conference. Whether he came before us or after us I am not sure. And there was a Mr. Travis. Whether he came before or after us I don't recall.

Q. Had you met Mr. Wacker prior to that time?

A. Oh, yes, I met Mr. Wacker for the first time in 535 Mr. Fidler's office at that conference I told you about.

Q. When you attempted to sell your stock to them?

A. That is right.

Q. And they turned you down?

A. Yes.

Q. What was the purpose of this meeting Sunday night?

A. We were again making an attempt to sell them our stock.

Q. Had you ever fixed the price for them?

A. No, sir.

Q. Had you met Mr. Travis before that night?

A. No, I had not.

Q. Who opened the conversation, and, as fully as you can, tell us what occurred there.

A. I don't recall exactly who opened the conversation. I know at that meeting we again attempted to sell our stock to the AMMCO, the Automotive, and they didn't want to buy it.

Q. How long were you at that meeting?

A. Not very long. I think we were there less than an hour. I had to get back to the celebration. As it was, I missed the dinner.

Q. You think you left there about nine o'clock?

A. Not later than nine.

536 Q. Do you know when Mr. Travis arrived?

A. No, I don't but he was there during our conference.

Q. And he remained there when you left?

A. I think so, because I left with my client.

Q. What did you tell these people about the Precision Company and about the stock you were trying to sell?

A. Well, so much time had elapsed between our first meeting in Mr. Fidler's office and this meeting at his home that I had acquired a little more knowledge of the difficulties between Precision Instrument and AMMCO. I knew that they were having some difficulty in a suit that was pending. We offered them the stock. I don't think a price was set at all. But they refused to buy it.

Q. What did you say when you offered them the stock?

A. I don't recall the exact conversation. It is over three years ago.

Q. Did you tell them that Larson's Patent Application was a frame up and that Snap-On Tools was back of the whole thing, and that Thomasma had developed the wrench and that he had turned it into the Precision Instrument Manufacturing Company for the stock you were trying to sell?

A. No, I never used the word "frame up."

Q. What did you tell them?

A. And I didn't make that statement that you were reading there.

537 Q. What did you tell them about Larson's Patent Application?

A. I don't recall that I said anything at all about the Patent Application. I may have, but it has been so long ago that I don't recall.

Q. Didn't you tell them that if Thomasma got on the witness stand and had testified in accordance with the facts he would thereby destroy the value of his stock and that he, therefore, thought Automotive should purchase it?

A. Did I tell them that?

Q. Yes.

A. No.

Q. What did you say about that stock?

A. I don't recall the exact conversation, it has been so long.

Q. Tell us in substance what you told them as the inducement for the purchase of that stock.

A. At that conference, my best recollection is that we again tried to get them to purchase that stock so that they could become a stockholder in the company, and I don't recall exactly now whether or not anything was said about Thomasma's stock becoming valueless if he testified, because we knew eventually he was going to have to testify.

538 Q. What did you know that he was going to have to testify to?

A. Did I know what he was going to have to testify to?

Q. Yes.

A. I didn't know what the attorney was going to ask him.

Q. You knew the facts that were discussed at that meeting on November 3rd, did you not?

A. Oh, I was there, certainly.

Q. And Mr. Thomasma told the facts, didn't he?

A. No, I did most of the talking.

Q. And what did you tell them about that Larson application and the facts about it?

A. I don't recall.

Q. You don't recall anything of that?

A. No, sir.

Q. You don't recall that you told them that Thomasma did most of the work on that wrench?

A. I don't think so, that I disclosed that information.

Q. You just told them, "We have got this stock and we would like to have you buy it"?

A. Well now, I have answered before, I don't recollect the exact conversation.

Q. Do you recall anything that Thomasma said at that meeting that night?

539 A. No, I don't. My client did very little talking, on my instructions.

Q. Do you recall anything that Mr. Wacker said that night?

A. I think one of the reasons they didn't want to buy the stock was they were afraid it was going to look as though they were paying us for testimony.

Q. They knew what that testimony was to be, did they not?

A. I don't know.

Q. You told them and discussed the facts there that evening, didn't you?

A. No, that is not what I said.

Mr. Lindsey: Is this cross-examination or direct examination? Let us get this settled. I object, your Honor.

Mr. Ooms: I think the witness' lack of recollection entitles me to lead a little bit. He says he has no recollection of the meeting. It was an important meeting, on a Sunday evening at this lawyer's house.

The Court: He has told you two or three times he can't recall what he said.

The Witness: Your Honor, I have no interest in the outcome of the suit either financially or any other way, and I am doing the best I can.

540 Mr. Ooms: I appreciate that.

The Court: That is all you are bound to do.

Mr. Ooms: I am sorry I am a little impatient, your Honor, but—

The Court: I think you have asked him that question at least three times and the answer has been the same each time.

Mr. Ooms: Q. Do you remember what Mr. Wacker said that evening?

A. I think I have answered that question once. He refused to buy the stock. He was afraid as though it would look as though they were paying us for testifying.

The Court: Who is "us," Thomasma—

The Witness: Yes. I mean my client.

Mr. Ooms: Q. You were offering your stock that evening also, weren't you?

A. Oh, yes.

Q. Do you recall that somebody said there that night that Thomasma had developed the wrench that was covered by the Larson application?

A. I don't recall that being said at that meeting.

Q. Do you recall any discussion about who developed the wrench, that wrench?

A. No, I don't.

541 Q. Well, do you recall any discussion as to the reasons why they might be charged with purchasing testimony if they did purchase the stock?

A. Will you read that question?

Mr. Ooms: Will you read the question, please?

(The last question was read by the Reporter.)

The Witness: The only thing I recollect, that our deal was that eventually my client would have to testify and—

Mr. Ooms: Q. And that testimony would be—

A. —and they didn't want to purchase our stock under those circumstances for that reason, that it would look as though they were paying for his testimony.

Q. Was that testimony favorable or unfavorable to Automotive?

A. Do you mean would it be favorable or unfavorable?

Q. Yes.

A. I don't know.

Q. You don't know?

A. I don't know. It is hard to say.

Mr. Lindsey: I think he has answered the question, your Honor.

The Witness: I don't know all the facts in the case.

Mr. Ooms: Q. Do you recall what Mr. Fidler said there that evening?

542 A. His attitude was the same as Mr. Wacker's. They didn't want to buy our stock for fear that it would look eventually as though they were purchasing our testimony, and by that I mean my client's.

Q. Do you recall Mr. Wacker and Mr. Fidler both reviewing all of the facts with relation to that Larson application?

A. There might have been some conversations that way. I don't recall exactly.

Q. Well, do you recall any of the substance of it?

A. No, I don't, not outside of what I have already stated.

Q. You left that meeting with Mr. Thomasma toward nine o'clock?

A. Yes, I left with him.

Q. Did you spend any time with him after that?

A. Only the time we spent in his automobile while he drove back to the hotel.

Q. Did you know why Travis was at that meeting?

A. Travis, I understood, was a mutual friend of Mr. Wacker's and Mr. Thomasma's.

Q. And you had never met him before?

A. No, I had not.

Q. Did he enter into the discussion at that meeting?

A. I don't think so.

543 Q. And after you left Mr. Thomasma that night did you have any further relations with Mr. Wacker or Mr. Fidler?

A. Yes. I was at Mr. Fidler's office once after that.

Q. When was that?

A. That was sometime during the following week. I think it was on a Thursday.

Q. In what connection?

A. I went back again to see if I could induce him to change his mind.

Q. About what?

A. About the purchase of this stock.

Q. That was on Thursday, the 7th of November?

A. If that is the date of the following Thursday, I think so. I think that is the date.

Q. Did you talk to Thomasma in that interval between Sunday and Thursday?

A. I don't think so. I wrote him a letter, reminding him of our appointment with Mr. Alberts that following Saturday, and then he subsequently called me up the next day, telling me that he couldn't come in.

Q. Did you know, when you saw Mr. Fidler on Thursday, that Mr. Thomasma was going to see him that night?

A. No, I didn't know that.

Q. Mr. Thomasma didn't disclose to you that he
544 was having these other meetings?

A. No, I didn't know that.

Q. Did he disclose to you that he had sent a mes-

sage to Mr. Wacker by Mr. Travis on Monday, the 4th of November?

A. No, I didn't know that.

Q. And you were rather flatly turned down on Sunday night at this meeting at Mr. Fidler's home, weren't you?

A. I don't understand who you mean by the term "flatly." I mean they refused to buy it. It was a very pleasant time I had there. It was a rather sociable evening.

Q. And they told you the reason they wouldn't buy it was because it would react upon Thomasma's testimony?

A. That is right. They were afraid that if it was brought out that—

Q. What occurred between then and Thursday to make you think they might change their mind about purchasing the stock?

A. Right now I don't know of anything that had occurred between that Thursday and Sunday which made me think I might induce them to buy it, but I certainly wasn't passing up an opportunity. I mean I was still after them.

Q. You went to see them on Thursday at your own volition?

A. I think so.

545- Q. Did you tell Mr. Fidler you had an appointment with Mr. Alberts for Saturday?

A. I don't think I did.

Q. And they refused to buy the stock again on that Thursday, November 7th?

A. Oh, yes.

Q. Was Mr. Wacker at that meeting or not?

A. No, he wasn't.

Q. Did Mr. Fidler tell you he was to see your client that night?

A. No, sir, he didn't.

Mr. Fidler: He already has asked that question three times, may your Honor please.

Mr. Ooms: I don't think I did, but I may forget now and then. I haven't the perfection of memory that some of these gentlemen have.

You see, the interruption costs me more time than the question.

Q. You left Mr. Fidler then on Thursday, November 7th, after he had declined to buy the stock?

A. Yes.

Q. When was the next time you met him?

A. I don't think I saw Mr. Fidler after that until, oh, sometime last week. Possibly two days before you 546 called me, or you were in my office.

Q. Did you talk to him then when you saw him last week?

A. Oh, yes.

Q. At some length about the facts?

A. Well, he was in my office with Mr. Hibben—

Q. And you had a long conversation?

A. —and I think they came in about three o'clock and left about four-thirty.

Q. And I called you last week and asked you to talk to me, didn't I?

A. You were in my office with another gentleman whom I subsequently found out was Mr. Freeman.

Q. That is correct.

A. And I called you the next day because you had left your card. You were out. Then you called me back.

Q. And you said that you had instructions not to talk to me?

A. Yes, I had instructions from my client not to talk to you. I told you at that time—

Q. You very courteously declined to have me interview you on that subject?

A. I spoke to you.

Q. Did you have any further communications with Automotive or Mr. Wacker after that night of November 3rd?

547 A. I don't recall any.

Q. When did you learn that Mr. Thomasma had executed the affidavit that he executed on November 15th, 1940?

A. I didn't learn of that affidavit until just shortly. I don't think that I had ever heard of that affidavit until I was here in Court today.

Q. Did you know that Mr. Thomasma was in the company of Mr. Baumann a large part of that time in November, 1940?

A. My client first called me and said there was a Mr. Baumann who was circulating around in Des Plaines, represented himself to be some manufacturer's representative, some company that operated in New York, wanted me to find out who he was and if he was the manufacturer's representative from this certain company. I wrote to some corresponding attorneys in New York whom I had done

business with, asking if there was such a company, if there was a Mr. Baumann connected with the company. They answered and said there was no such company and there was no such Mr. Baumann, as far as they could ascertain.

Q. Did Mr. Baumann figure at all in this meeting of November 3rd, 1940? Was he mentioned?

A. No, not to my best recollection.

Q. And that is about all you had to do with Mr. Baumann's attending Mr. Thomasma?

548 A. I knew Mr. Baumann was operating in Des Plaines after that.

Q. That is about all?

A. I had an idea he was an investigator representing AMMCO, AMMCO's interests.

Q. Did you know the facts that he was looking for?

A. I didn't know what facts he was looking for.

Q. As I understand it, you have no recollection today of ever having discussed the facts with relation to Thomasma's participation in the invention covered by the Larson application with Mr. Fidler or Mr. Waeker?

A. In making my attempts to sell this stock so that my client could realize some financial return for the time he has put in, I wasn't going to disclose any information which would destroy the value of that stock.

Q. You knew that the information was of such character that it would destroy the value of the stock, didn't you?

A. No, not definitely.

Q. When did Mr. Thomasma instruct you not to discuss this matter with me?

A. After you had left your card at my office, I think the following day, he called me, and I spoke to him.

Q. That was last Tuesday?

A. Well, it was the day after you were in my office.
549 If you were in there Monday, then it was Tuesday I spoke to him. If you were in there Tuesday, then it was Wednesday I spoke to him.

The Court: If it was Wednesday, then it was Thursday?

The Witness: That is right, your Honor.

Mr. Ooms: That is all from Mr. Krichiver.

Mr. Lindsey: No cross-examination.

The Court: All right, Mr. Krichiver.

The Witness: May I leave now?

The Court: Yes, sir.

(Witness excused.)

Mr. C. TRAVIS, called as a witness by the Defendants, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Goms.

Q. Will you please state your name?

A. A. C. Travis, T-r-a-v-i-s.

Q. What is your address?

A. 2414 Coyle Avenue, Chicago.

Q. What is your occupation, Mr. Travis?

A. Tool and die maker.

Q. Where do you work?

550 A. Crowe Name Plate, Ravenswood and Grace Streets, Chicago.

Q. You were at one time an employee of Automotive Maintenance Machinery Company, were you not?

A. Superintendent.

Q. How long?

A. Two or two and a half years. I don't recall just how long.

Q. When was that?

A. Well, I think it covered a period around 1935, up until 1937, something about those years.

Q. And did you know Mr. Wacker, the president of that company?

A. I do.

Q. And you know Mr. George B. Thomasma who was the working for that company?

A. He worked there for me, yes.

Q. What was his position?

A. Well, doing general machine work and any development work we might have done, he would assist and help on that.

Q. Do you recall in November, 1940 arranging for a meeting between Mr. Thomasma and Mr. Wacker?

A. I did.

Q. Would you relate to us just what occurred from 551 the time Mr. Thomasma instructed you to arrange for that meeting to the time of the meeting?

A. Well, while I had left the Automotive Maintenance Machinery Company we kind of kept in touch with one another occasionally. Otherwise, him and his wife would

come down to our home, and this particular night he came down, or the evening, he told me that, he asked me to take a little walk with him, and I walked around the Indian Boundary Park, near their home, and he told me about this.

Q. When was that?

A. That would be a short time before the meeting. I wouldn't know.

Q. Within ten days before the meeting?

A. I imagine along about that.

Q. What did he tell you?

A. Merely he wanted to try to undo a wrong. That is about the substance of it.

Q. Tell us as nearly as you can the substance of what he told you the wrong was.

A. Well, that, as near as I can recollect, he had taken this idea out of the AMMCO and started up this business in Des Plaines, or created it.

Q. When you say "this idea" you are talking about an idea about a torque wrench?

552 A. That is correct.

Q. Did he tell you about that torque wrench and who was making it?

A. He did, and many times he came to the house before that, I never knew nothing about it until this particular night.

Q. And what did he say?

A. And he asked me if I wouldn't make an appointment with Mr. Wacker.

Q. Well, he had told you that he had brought the idea of the torque wrench to the Precision people, is that right?

A. That is correct.

Q. Did he tell you anything about there being a patent application pending on it?

A. Well, that I wouldn't know.

Q. And what were you to convey to Mr. Wacker?

A. An appointment.

Q. Well, what did you do after Mr. Thomasma talked to you that evening?

A. I got in touch with Mr. Wacker.

Q. Do you recall when that was?

A. No, sir, I don't.

Q. And Mr. Wacker came in to Chicago and saw you one evening on Friday, did he not?

553 A. Well, I think after I called Mr. Wacker on the phone that he made this appointment for me to meet him. I think that is the way it was.

Q. You met him on a Friday evening, November 1st?

A. If it was—we will say Friday evening. I don't know what evening it was.

Q. And he picked you up in his car?

A. I believe I met him at the Edgewater Beach Hotel.

Q. And then you were driven to a nearby tavern or restaurant where you could sit down and talk?

A. A lunch room and a bar there in connection with it, yes.

Q. What did you tell Mr. Wacker there that evening?

A. I told him what Mr. Thomasma told me.

Q. Tell us as nearly as you can the substance of what you told Mr. Wacker?

A. Well, George seemed to be a little worried that night about something, and he told me he would like to see Mr. Wacker, and he explained that this idea of this wrench, that they had started this firm up here, and it seems as though these people he was connected up with—I heard you mention the gentleman's name, but I don't recall who you might have been talking about—that there was a little trouble between them—I think there were two others besides Mr. Thomasma—they were pushing him out or pushing him around or something, and I simply told Mr. Thomasma, "You know Mr. Wacker for years. You worked for him long before I became superintendent."

I said, "I think you always found him a straight shooter and I think that if you have anything under cover you should go back and tell Mr. Wacker," and he did, or the appointment was set up for him to talk to Mr. Wacker.

Q. How much of this that Mr. Thomasma had told you on the previous week did you tell Mr. Wacker?

A. He never mentioned that to me before that particular night.

Q. No, but of that which Mr. Thomasma told you that night how much did you relate to Mr. Wacker?

A. Not a great deal, because at that time I wasn't connected with the AMMCO. I had charge of the Allied Trade Schools here at that time on West Lake Street, and I just merely was a go-between to set up an appointment. I knew Mr. Wacker well and I had the same respect for Mr. Thomasma. If there was anything to settle out, I made the appointment, but I thought it was my place to do that.

Q. Did Thomasma tell you why he wanted you to make the appointment rather than to make it directly with Mr. Wacker?

A. He did not.

Q. And you saw Mr. Wacker?

A. I think he maybe came to me for a little advice, and that was my advice to Mr. Thomasma.

Q. Your advice was that he should make a clean breast of it?

A. That is right.

Q. And you told Mr. Wacker then on Friday night what Thomasma had told you the previous week?

A. That is right.

Q. And a meeting was arranged for the following Sunday evening, wasn't it?

A. The meeting was arranged for a Sunday afternoon and, as far as the parties at the meeting were concerned—this was at Mr. Fidler's home—Mr. Wacker, myself, Mr. Thomasma, and when I went out there I found out the meeting was postponed because Mr. Thomasma had his lawyer, he wanted him there, and he had some arrangement, and he couldn't be there at that time, so that meeting was set back for later in the evening.

Q. And you returned later in the evening and attended the meeting?

A. Yes, I was back there, that is right.

556 Q. When you arrived there who was there?

A. Well, I believe they all were there.

Q. That is, Mr. Wacker, Mr. Fidler, Mr. Thomasma and his attorney, Mr. Krichiver?

A. I think that is right. Well, I wouldn't like to go on record that they were all there at that either. I don't just recall, but there was some portion of us there. I just wouldn't go on record on that. I forget whether George and his attorney were there at that moment or not.

Q. But they were there during the evening some time?

A. Yes, that is right.

Q. Do you recall when you arrived there?

A. Well, I think it was very close to around eight o'clock in the evening. Of course, I knew what time that second appointment was set up for. I think it was around eight o'clock in the evening.

Q. Do you recall when you left?

A. I left shortly after, very shortly after Mr. Thomasma left, and his attorney.

Q. But you did remain after they had gone?

A. Maybe a couple of minutes.

Q. Now what conversation was there while you were there and Mr. Wacker was there?

A. Well, I didn't take much interest in the conversation because it really didn't involve me one way or the other any more than I just done my part as to pull the principals together, and I know there was a time there was a stock discussion, about stock, sale of some stock.

Q. Was there any discussion of Thomasma's—of the fact Thomasma had revealed to you the previous week that he had invented the wrench that Precision was making and had carried it over from Automotive?

A. I don't recall that being discussed.

Q. What is your recollection of what was discussed? You said the stock. Was there anything else discussed?

A. Well, I tell you, the meeting was not so interesting, because previous to that I had been connected with Mr. Wacker before in the refrigeration game, and I remember his talking about different people we knew then, and stuff like that, during this conversation. This conversation wasn't set down on one hard issue or nothing. It was kind of a pleasant hour that was spent there.

Q. Do you recall your telling Mr. Wacker that Thomasma had told you that he wanted to do the right thing and testify as to the facts but that in doing so Thomasma would destroy the value of the stock that he owned in the Precision Company?

A. I don't recall no such statement.

558 Q. Do you recall making that statement to Mr. Wacker on the previous occasion?

A. That I made that statement to Mr. Wacker?

Q. Yes.

A. No. About the only thing I told Mr. Wacker that Mr. Thomasma told me, he wanted to undo a wrong which was, as near as I could assume, taking an idea out of one firm and planting it in another, or something similar to that.

Q. Do you recall any discussion with Mr. Wacker about prosecuting Mr. Thomasma?

A. No, sir.

Q. Do you recall Mr. Wacker telling you either on that Sunday evening or the previous Friday that they, Automotive, had no desire to proceed against Thomasma in any way unless forced to do so should Thomasma get on the stand and perjure himself?

A. Well, I can't recall—

Q. You don't recall that discussion?

A. —that kind of a conversation, no, I don't.

Q. Do you recall discussing with Mr. Wacker the possible purchase by Automotive of Thomasma's stock either on that Friday or that Sunday evening?

A. I might have mentioned to Mr. Wacker in our conversation that evening something of the purchase of 559 stock. I can't even recall, I wouldn't be sure, because I don't know whether Mr. Thomasma told me that is what he wanted to see Mr. Wacker for or not. I am not so sure about that.

Q. Well now, do you recall that at that meeting on Sunday night you started out by saying that you wanted to see Thomasma and Wacker get together because you felt friendly toward both of them?

A. That is right.

Q. And that was followed by some discussion by the other people?

A. What other people are you referring to?

Q. Mr. Travis, Mr. Thomasma, Mr. Wacker and Mr. Fidler.

A. Well, at the time I made that appointment, as far as that goes, I didn't know when I was making the appointment for Mr. Thomasma and Mr. Wacker, I didn't know whether the appointment would be made. I didn't know Mr. Krichiver and I didn't know the appointment would be even at Mr. Fidler's home.

Q. When you arrived there you knew the purpose of the meeting?

A. I knew the time it was set up, because I took Mr. Thomasma and told him what time Sunday the meeting would be set for out, through his attorney, which I didn't know the man at that time, he delayed the appointment on account of some wedding or something, that I knew 560 he must have been at some function, because the man was in a dinner suit, as far as that goes?

Q. What developed at the meeting? Was it in connection with the wrong Mr. Thomasma had done Automotive by taking the idea of the wrench over to Precision, or was it all in connection with the stock of Precision?

A. I might tell you a little bit about it, as far as that is concerned. I heard mention of a stock sale. Mr. Fidler had quite a big home there, and I might tell you half the time I wasn't even in that room, that is how much interested I was in that conversation out there.

Q. You don't recall today the substance of that conversation?

A. I do not.

Q. Do you recall any review of the facts that Mr. Wacker and Mr. Fidler made, telling you that they knew all about the wrench, and reviewed the facts for you, and that you and Thomasma and Krichiver sat there and agreed to that?

A. That I sat there and agreed to it?

Q. Yes.

A. No, I didn't agree to it because I had nothing to agree to. I wasn't interested in the outcome of the situation. I was trying to get a couple of people that had been connected together, and I worked for Mr. Wacker. I was superintendent in the factory, and Mr. Thomasma worked for me.

Q. You left that meeting that night and went back to your home, did you not?

A. Most likely. That is probably what I done.

Q. And Mr. Thomasma was still there?

A. Yes, because Mr. Thomasma, if I recall, left his wife at my home while he went to get his attorney and go out there, and that afternoon I wasn't home because I do handle a little real estate. I am still a real estate broker, I might tell you, and I was out in Edgebrook on some real estate transactions that afternoon, when I found out the meeting was not going to take place until eight o'clock.

Q. When you got back to your home Thomasma was still there?

A. I believe they were, if I recall correctly. I believe they were.

Q. Did you have any conversation with him after the meeting?

A. I don't think so, to speak of. I don't think there was much of a conversation.

Q. Do you recall that night you telephoned Mr. Wacker at his home in Lake Forest between one and two o'clock in the morning?

562 A. Well, I might have called him.

Q. What about?

A. Well, I wouldn't call him just about the weather. I must have called him about something we talked about, or something. I don't know. I can't recall.

Q. Do you recall making that telephone call?

A. Well, I won't say yes or I won't say no, because I

don't really remember what took place or what happened in the telephone conversation, if there was one.

Q. Don't you recall you called Mr. Wacker and told him that you had had another talk with Mr. Thomasma who had waited for you at your home? Do you recall that?

A. That is possible. I might have called Mr. Wacker, as I said.

Q. And did you tell him that Thomasma had assured you that if he was called upon he would get on the witness stand and testify accurately and honestly as to the facts in this case?

A. Well, if I told Mr. Wacker that, that would be correct, because I have all the confidence in Mr. Thomasma, that he would do that if he told me that.

Q. Did you see either Mr. Fidler or Mr. Wacker after that evening?

A. Directly after that?

Q. Any time after that?

563 A. I think I saw Mr. Wacker once since that time.

Q. Very shortly after that or not?

A. Oh, I will say that it was three months ago. Two or three months ago.

Q. Did Mr. Wacker authorize you to make any promises to Mr. Thomasma with respect to anything in case he should testify?

A. No.

Q. Did you promise Mr. Thomasma that if he went ahead and did some experimental work he would be paid for it by Automotive?

A. I don't recall that.

Mr. Ooms: That is all for Mr. Travis.

Mr. Fidler: No cross examination, your Honor.

(Witness excused.)

564 Mr. Freeman: John Thomasma, please.

JOHN THOMASMA, called as a witness on behalf of the defendants herein, being first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Freeman.

Q. Will you state your full name and residence?

A. My name is John Thomasma, 860 Aldine Avenue, Chicago.

Q. You are a brother of the George B. Thomasma that has been referred to here today?

A. I am.

Q. And do you know Mr. Fidler who is sitting here in front of you?

A. I have seen Mr. Fidler a number of times. I share offices in the same building as he.

Q. Were you called to Mr. Fidler's office in connection with a drawing, rather, a copy or a photostat of the drawing I now hand you marked Defendants' Exhibit 9?

A. He called me down there once.

Q. And will you tell us just what took place when you were called to Mr. Fidler's office—

565 A. Well, Mr. Fidler—

Q. (Continuing)—in connection with a photostat of the drawing I just handed you, Defendants' Exhibit 9?

A. Mr. Fidler asked me if I could recognize a certain drawing. I told him I couldn't positively identify it. He asked me then if I could identify the drawing as being one of my brother's. Then I told him I had seen a good many drawings but I couldn't identify any certain drawings as being drawn by the brother.

Q. Did you tell him it looked like a drawing made by your brother, George B. Thomasma?

A. No, not in those exact words.

Q. Well, what did you tell him in respect to the drawing?

A. I told him I was out to the brother's one Sunday and he was working on a drawing but just what it was or about I didn't know exactly.

Q. Do you recall what the drawing was you saw at your brother's on this Sunday you are now talking about?

A. That paper, brown paper is about the same as he had on the board at the time.

Q. Do you recall what the drawing was of? That is, the structure supposed to be exemplified by the drawing?

566 A. Well, it was a drawing of a wrench. I recall he had a part of a wrench there he was taking dimensions of, setting it down on paper.

Q. Did you watch George B. Thomasma make the drawing on that Sunday afternoon?

A. No.

Q. Now, when you talked to Mr. Fidler, you were working from a photostat copy, is that correct?

A. I believe that is the one he had.

Q. I am now going to hand you the original from which that photostat was made which Mr. Fidler showed you, Defendants' Exhibit 9, and I am going to ask you to look at it carefully and tell us now whether or not that was the drawing which you saw your brother make, George B. Thomasma, on the Sunday afternoon about which you have just testified?

A. Well, I can't answer that definitely for this reason. When I was out to my brother's house, he only had a drawing partly made, it wasn't completed. This here, I see, is completed.

Q. Do you recall what part was made when you were at your brother's home?

A. Yes, I would say the upper part here and I recognize the brown sheet of paper which is something rather unusual for anyone to be drawing on. They generally use a regular drawing paper if they are drawing a sketch or drawing a plan.

Q. And were you informed that Sunday afternoon that it was a wrench that your brother was drawing?

A. Well, he did mention something about the drawing, making a drawing of a certain wrench he was getting up, certain ideas.

Q. And you recall it was on this brown paper?

A. It was on the brown paper.

Q. About how does the size of Defendants' Exhibit 9 compare with the drawing you saw on that Sunday afternoon?

A. It seems to be about the size of the paper that was on the board.

Q. Can you read drawings?

A. I can, yes, sir.

Q. Will you now look at the upper left hand corner of that drawing? Does that help you refresh your memory as to what you saw on this Sunday afternoon your brother was making?

A. Well, the portion up here (indicating) is about like the one he was drawing on that Sunday afternoon.

Q. You indicated the upper figure across the top of the sheet on Defendants' Exhibit 9?

568 A. That portion up there (indicating).

Q. Were there any numbers or lettering or markings of any kind on that figure?

A. No, I didn't get close enough to see any markings on the drawing.

Q. Who else was there on that Sunday afternoon?

A. My wife, Mrs. Thomasma, was there.

Q. Your wife and—

A. And my brother's, George's wife was there.

Q. Your brother George's wife?

A. Yes.

Q. When you were called down to Mr. Fidler's office, did he tell you that the drawing was made on a manila sheet of wrapping paper?

A. No, he didn't.

Q. He merely showed you a part of it?

A. He merely showed me a photostat. He didn't mention at all what type of paper was used or what type of paper my brother used.

Q. He merely asked you to identify as to whether or not it was made by your brother?

A. That is correct.

569 Q. When did you have this meeting with Mr. Fidler about which you are now testifying?

A. It might have been two or three weeks ago; I couldn't tell you exactly.

Q. Was it after November 15, 1940, or prior to November 15, 1940?

A. I think it was after.

Q. It was after?

A. I believe it was.

Q. Did Mr. Fidler then have an affidavit that was executed by your brother George and did he read any parts thereof to you?

A. No, he didn't read any of it at all. He may have it but he didn't mention it, as I recall.

Q. Did you talk to your brother George about that time with respect to the drawing about which Mr. Fidler made inquiry of you?

A. No, I didn't.

Q. Did you ever talk to your brother George about the drawing?

A. No, my brother and I very seldom discussed anything of that nature between the two. He went about 570 his business and I went about my affairs. We both took care of our own occupation and so forth.

Q. Were you told as to why Mr. Fidler was checking

up as to the making of the particular drawing by your brother?

A. Well, there were casual remarks.

Q. Well, what were they? Relate them as best you can.

A. Well, as I say, there were remarks about my brother—that Automotive were looking into the facts. It appeared as though there was some infringement or something of that sort. Just how deep it went, he never revealed. He mentioned at the time, perhaps, Mr. Fidler might call me down to his office there and ask me to identify the drawing.

Q. And did Mr. Fidler tell you anything about the drawing he made inquiry of?

A. No, he didn't, just merely showed it to me and asked if I could identify either the drawing or the work on the drawing as being the brother's, and I told him I could identify the paper if I saw it, being brown paper.

Q. You did talk about the brown paper in that meeting?

A. The brown paper.

Q. Were you informed that Larson had testified that the drawing you hold in your hand, Defendants' Exhibit 9, was in fact made by a high school boy, that is, he so testified?

A. Well, that was brought out. Just how it was brought out, I couldn't tell you, or who brought it out, whether it was Mr. Fidler or whether my brother told me.

Q. Did you make any comments with respect to the drawing after it was shown to you as to whether it was made by a high school boy or whether you thought your brother made it?

A. No.

Q. You are not sure whether Mr. Fidler gave you that information with respect to the high school boy making the drawing—that is Larson's testimony—or whether it came to you from your brother?

A. It was one of the two; which one, I don't remember exactly.

Q. Were you ever at Mr. Fidler's office in company with your brother?

A. No, I wasn't.

Q. When did you last see Mr. Fidler in connection with this drawing or this case?

A. Well, I saw Mr. Fidler, he came up to my office, I believe it was a week ago last Saturday.

Q. Was Mr. Hibben with him?

572 A. He was.

Q. Did they talk about this particular drawing again?

A. The only thing they brought up in connection with the drawing was this: That the case was coming up again for hearing, discussion, and that they might call me into testify whether or not I could identify the drawing.

Q. And how long was Mr. Hibben and Mr. Fidler with you this Saturday afternoon?

Mr. Lindsey: Oh, I think that is all immaterial, if your Honor please.

The Court: How is that material?

Mr. Freeman: Oh, well—

Q. Have you ever talked to Mr. Ooms or myself about it?

A. No, I have not.

Q. You have never talked to me prior to your testifying today, is that correct?

A. That is correct.

Mr. Freeman: That is all.

Mr. Fidler: No cross examination.

(Witness excused.)

Mr. Freeman: Mr. George B. Thomasma.

573 GEORGE B. THOMASMA, called as a witness on behalf of the defendants herein, being first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Freeman.

Q. Will you state your full name, please?

A. George B. Thomasma, 1121 Potter Road, Park Ridge, Illinois.

Q. Mr. Thomasma, you were connected with Automotive Maintenance Machinery Co., the plaintiff in this case, prior to June 5, 1939, is that correct?

A. Yes, sir.

Q. And you were dismissed from that company's employ on that date, is that correct?

A. That is right.

Q. What was your job with the company up to June 5, 1939?

A. I worked in the experimental department most of the time.

Q. And you knew Mr. Zimmerman?

A. Very well.

Q. And, of course, you know Mr. Wacker?

A. Yes.

Q. And you know Mr. Travis?

A. Yes.

574 Q. Will you relate the circumstances under which you were dismissed from the Automotive's employ on June 5, 1939?

A. It was the outcome of a conference in Mr. Wacker's office.

Q. And at that time—

A. Mr. Wacker asked that I tender my resignation and I did.

Q. Why did he ask you to tender your resignation? What was the conversation at that time?

A. It was pertaining to my connection, or his belief of my connection, with the Precision Instrument Manufacturing Company.

Q. Did you at that time admit your connection with the Precision Instrument Company?

A. I did not.

Q. In fact, though, you were connected with the Precision Instrument Company?

A. I was.

The Court: Let me ask you, are you going to ask this witness questions that might incriminate him?

Mr. Freeman: No, we do not want to ask him any question that might incriminate him at all, your Honor.

The Court: You understand you don't have to answer such questions?

575 The Witness: I do. If I am in doubt, I will ask you, your Honor.

The Court: Very well.

Mr. Freeman: Q. Mr. Thomasma, keeping in mind what his Honor, Judge Igou, just said, that you do not have to answer any questions that might in any way incriminate you; will you tell us what the wrong was you wanted to right when you talked to Mr. Travis and asked him to arrange a meeting for you with Mr. Wacker?

A. I haven't said anything about a wrong existing, have I?

Q. Well, then, tell us the purpose of your arranging for a meeting through Mr. Travis with Mr. Wacker at Mr. Fidler's home on November 3, 1940?

A. I believe my attorney covered that. We wanted to sell the stock I had in the Precision Company.

Q. Was there any conversation there with respect to the interference involving the Larson application and the two Zimmerman applications?

A. It was mentioned—You mean in the conference at Mr. Fidler's home?

Q. Yes.

A. It was disclosed there that an Interference suit 576 existed and that, inasmuch as the matter was in the hands of his attorney, there was nothing he could do but follow their advice, and that was his refusal to purchase the stock.

Q. And you knew that an Interference existed between Zimmerman and Larson prior to the meeting on Sunday, November 3, 1940, did you not?

A. I had no definite proof.

Q. Did you ever talk to Mr. Larson or Mr. Carlsen with respect to the Larson application which was involved in the Interference?

A. I hadn't talked to them very much that entire year; in fact, they had very little to say to me. For that reason I had an attorney representing me.

Q. You talked to Mr. Carlsen and Mr. Larson shortly after November 11, 1940, did you not, with respect to a letter having to do with an anonymous telephone call received by Harry C. Alberts, did you not?

A. The letter was written or signed by Harry C. Alberts and addressed to Carlsen or Larson.

Q. And you talked to them at that time about it?

A. They looked me up to talk to me, yes.

Q. Well, they talked to you about it?

577 A. That is right.

Q. And you then conveyed that information to Mr. Baumann?

A. I did.

Q. Coming back to this meeting of November 3, 1940, what was said by you with respect to the Interference subject matter to either Mr. Fidler or to Mr. Wacker?

A. Nothing.

Q. Did you have your attorney tell them anything with respect to the Interference subject matter?

A. No, I did not.

Q. Do I understand that the sum and substance of that meeting on November 3, 1940 was all directed to their purchasing stock, your stock in Precision from you?

A. That was our purpose.

Q. Well, was there any other conversation having to do with the Larson-Zimmerman controversy or the controversy that existed between Automotive and Precision?

A. There may have been; I don't remember.

Q. Did Mr. Fidler tell you what the facts were as they knew them at that time with respect to the Interference?

A. I did hear Mr. Fidler say he intended to prove they were wrong in some of their dates or thought he could prove it.

578 Q. Did Mr. Wacker likewise say that they would prove that Larson's dates were wrong?

A. I don't know whether he did or not, I am not sure.

Q. But you heard Mr. Fidler so state?

A. Yes.

Q. Did you tell him what the facts were as you knew them?

A. I did not.

Q. Were you informed that evening that Larson's testimony included the making of a drawing by a high school boy sometime long prior to 1938?

A. That wasn't mentioned that evening, no.

Q. No mention was made of any drawing?

A. (No answer audible.)

Q. Did Mr. Fidler give you any information as to how he was going to prove that Larson was in error or his dates were wrong?

A. He did not.

Q. He merely made the statement?

A. (No answer audible.)

Q. Did you make any comment?

A. I did not.

Q. You knew what the facts actually were at that 579 time, did you not?

- A. What facts?

Q. That is as to when Larson had made his torque wrench, the torque wrench of the Larson patent?

A. I helped make it.

Q. You knew what the facts actually were?

A. I helped make it.

Q. You were part inventor?

A. I didn't get you.

Q. You were part inventor or the inventor?

A. It was my idea.

Q. And did you tell either Mr. Fidler or Mr. Wacker that evening that the Larson wrench, the subject matter of the Larson Patent Application, was your idea?

A. I did not.

Q. Did you ever tell them that?

A. Not that evening.

Q. Did you tell them that later?

A. I told Mr. Fidler that later in substance.

Q. That was on the following Thursday evening, November 7, 1940, is that correct?

A. I believe that is the correct date.

580 Q. So we go ourselves straight, you had a meeting at Mr. Fidler's home, the first meeting, on Sunday evening, November 3, 1940?

A. That is right.

Q. Then on the following Thursday evening you had another meeting at Mr. Fidler's home?

A. That is right.

Q. Then on the following Friday night, November 8th, you had another meeting at Mr. Fidler's home?

A. Yes.

Q. And, of course, these last two meetings, that is, on November 7th and 8th, Mr. Fidler was alone, that is, Mr. Wacker was not there?

A. That is right.

Q. Although he had a stenographer there, is that correct?

A. That is right.

Q. Now, when you left the meeting on November 3, 1940, you went back to Mr. Travis' home?

A. I did.

Q. And you then talked to Mr. Travis?

A. I believe he was there when I returned. He had his car and I had mine.

581 Q. You waited until he came back? At least, both of you spent some little time that Sunday evening at Mr. Travis' home when you were both together?

A. Yes, we did.

Q. And did you have Mr. Travis make any sort of an arrangement by which you were to be reimbursed or paid

in some manner for the time you were spending or for any work you might do in connection with either testifying in this Interference, or, in the Interference case, or any development work?

A. Did I arrange that?

Q. Yes.

A. With Mr. Travis?

Q. Yes.

A. No.

Q. Do you know whether there was any arrangement made under your direction by Mr. Travis with Mr. Wacker whereby you might be reimbursed?

A. No, I don't.

Q. Did Mr. Travis inform you that he had called Mr. Wacker between one and two on Monday morning, November 4, 1940, telling him that you would be willing to testify and you would tell the facts as they were?

582 A. If he did, I don't know of it.

Q. Do you recall your attorney telling Mr. Fidler and Mr. Wacker that if you testified and told the facts as they were, that your stock in the Precision Instrument Company would be worthless or of no value?

A. I don't remember that.

Q. What was your purpose in endeavoring to sell the stock to Mr. Wacker?

A. I didn't conceive the idea of selling it to Mr. Wacker. I instructed my attorney to sell it to anyone. It was offered to Carlson; it was offered to Larson, and a number of others.

Q. You knew your attorney had interviewed Messrs. Wacker and Fidler at Mr. Fidler's office some three or four weeks prior to this November 3d evening of 1940?

A. I don't remember when it was but he did say he had a meeting.

Q. And you knew that at the time he had turned down your offer to sell to them the stock?

A. Yes.

Q. And you had then arranged through Mr. Travis to have a meeting with Mr. Wacker?

A. I did talk to Mr. Travis and he suggested we
583 might be able to talk to Mr. Wacker and he finally succeeded in getting an appointment for Sunday afternoon. I then called my attorney and my attorney in turn changed that for Sunday evening.

Q. And you went through Mr. Travis even though you had already been turned down by Mr. Wacker?

A. I did.

Q. And you are now telling us you went to Mr. Fidler's home for the sole purpose of selling that stock?

A. That is right.

Q. Did you tell them then anything with respect to what you knew about the interference?

A. I did not.

Q. Did they tell you—when I say “they,” I have reference to either Mr. Wacker or Mr. Fidler—what they knew to be the facts in connection with the testimony given by Mr. Larson?

A. They didn't tell me anything of the sort. They did say they thought they had proof and that they would try to prove in the Interference suit that they were right.

Q. What was that?

A. That they were right.

Q. And that Larson was wrong?

584 A. That is right.

Q. Did they go so far as to tell you they would prove Larson was wrong in his proofs?

A. They didn't say they would prove it. They said they thought they could prove they were wrong.

Q. And nothing was said that evening at all about the Interference?

A. No, there was no discussion concerning that.

Q. And, yet, on November 7th, you went to Mr. Fidler's home, at which time you did disclose facts to Mr. Fidler which we now have incorporated in the affidavit. Defendants' Exhibit 21, is that correct?

(Handing document to the witness.)

The Witness: Read the question, please.

(Pending question read by the reporter as above recorded.)

The Witness: A. That is correct.

Mr. Freeman: Q. And what brought about your visit to Mr. Fidler's home on November 7th with respect to facts having to do with this Interference when on Sunday evening, as you have testified, nothing was said with respect to the Interference?

A. You mean how the arrangement was made I go to Mr. Fidler?

585 Q. Well, what brought about the disclosure of facts on Thursday evening when on Sunday evening, the

preceding Sunday, nothing was said with respect to the Interference?

A. I did receive a call asking me to call Mr. Fidler for an appointment to talk to him and I didn't know what would ensue.

Q. And from whom did you receive that call?

A. I am not positive who called me but I in turn called Mr. Fidler.

Q. That is, you were instructed by someone in response to a telephone call to call Mr. Fidler's office?

A. That is right.

Q. Do you recall whether that was Mr. Wacker or Mr. Travis or who it was?

A. No, it wasn't Mr. Wacker. It is possible it was Mr. Travis called me and suggested I call Mr. Fidler.

Q. And did you call Mr. Fidler?

A. I did.

Q. What did you then tell him?

A. He asked me if it would be convenient for me to come down to his office and talk to him or if I would prefer to come to his home and talk to him. It was nearer to his home from home and I went to his home the following evening, I believe.

586 Q. Did you ask him what he wanted to see you about when you talked to Mr. Fidler on the telephone?

A. I did not.

Q. Did he tell you what he wanted to see you about?

A. He did not.

Q. In other words, you were asked by someone to call Mr. Fidler and you did that?

A. I did.

Q. And you met Mr. Fidler at his home on November 7, 1940, although at that time you didn't know what the subject matter of the meeting was about, is that correct?

A. That is right.

Q. What brought about the disclosure of the facts we now have in this affidavit on the evening of November 7, 1940? Tell us what took place there.

A. The conference ensued and shortly after, possibly a half hour to an hour after, I had arrived, his secretary arrived and we sat down and she took down in shorthand the answers I offered in answer to questions put to me by Mr. Fidler.

Q. And before you were questioned, as we now have in

the affidavit, what was said to you by Mr. Fidler with respect to the controversy between Larson and Zimmerman?

A. Very little. He was apparently interested in my story and there it is.

Q. Did he tell you—or, first, did you know that there had been investigators employed by Automotive around Des Plaines at the time you visited Mr. Fidler's home on November 7, 1940?

A. I had a hunch there was; I didn't know there was.

Q. You had actually met Mr. Baumann at that time, had you not?

A. Yes, but I didn't know then that he was an investigator.

Q. You had spent some time with him?

A. He hadn't presented his credentials as such.

Q. You say he had not?

A. He had not shown his credentials as such.

Q. Incidentally, when did he present you his credentials?

A. I believe that was after I had seen Mr. Fidler at his home.

Q. Did you, by any chance, ask Mr. Fidler to have Mr. Baumann serve as a bodyguard for you?

A. I did not.

Q. You heard Mr. Baumann's testimony this morning with respect to serving as a bodyguard for you, or, 588 Mr. Wise's testimony?

A. I believe he did state that, yes. It wasn't at my request.

Q. Did Mr. Fidler tell you that testimony had already been taken in the Interference case on behalf of Mr. Larson? That is, not Larson's testimony necessarily, but some of his witnesses, when you talked to him on November 7, 1940?

A. He may have mentioned that. I am not certain. I wouldn't say yes or no. I am not certain of that.

Q. Did he tell you Larson's dates went away back to 1934 or long prior to the dates set up by Zimmerman?

A. He may have. I am not certain.

Q. Did Mr. Fidler tell you that Larson had produced as one of his exhibits a drawing dated May 20, 1936 which he testified was made by a high school boy?

A. It is possible he did; I am not certain.

Q. Did he show you a photostat of a drawing which is a photostat of the drawing that I now hold in my hand, Defendants' Exhibit 9, that evening, November 7, 1940?

A. It seems to me he did have a photostat of that drawing.

Q. What did you tell him when he showed you that photostat?

A. I told him that it looked like the one I made.

589 Q. Did you tell him you made it?

A. I told him it looked like the one I made.

Q. Was there any doubt in your mind as to whether or not you made that drawing?

A. You mean I either made it or I didn't make it, is that what you mean?

Q. Yes.

A. I made the drawing. You have it before you there. I made the drawing.

Q. Did you tell Mr. Fidler you made the drawing?

A. I believe I answered the question, sir.

Q. Yes, but just tell me. I may ask it over again. I am not trying to. I am trying to go along as fast as I can. Just tell us, did you tell Mr. Fidler you made it?

A. I did.

Q. Did Mr. Fidler then ask you to bring in any other drawings of yours he might use for purposes of comparing the drawing, Larson's Exhibit 27 in the Interference, Defendants Exhibit 9 now?

A. I don't know whether he asked for them or not. I did give him one or two drawings.

Q. You gave him two drawings?

590 A. One or two, I am not certain.

Q. Do you recall what the drawings were or what they disclosed?

A. It seems an entirely different article.

Q. Were they drawings you made for the purpose of comparing those drawings you later gave to Mr. Fidler with Defendants' Exhibit 9, or were they drawings you made—or where they drawings you had made prior to that time?

Mr. Lindsey: I object to the question unless it includes the photostat because the witness had not seen the drawing at that time. Mr. Fidler never had the original drawing; it was a photostat.

Mr. Freeman: Q. Well, I limit my question, Mr.

Thomasma, to a photostat of this drawing, and I understand you did not have the original drawing, you were making comparison with a photostat?

A. With a photostat. That is why I said I thought it looked like the one I made. I thought I made that clear.

Q. You don't happen to have any of the drawings with you you brought to Mr. Fidler or gave to Mr. Fidler so that he might have a comparison made of the drawing you gave him with the drawing you now have here, Defendants' Exhibit 9?

591 A. I have some with me, if that is what you want to see.

Q. I am not interested in any drawings unless they are the drawings you gave or showed to Mr. Fidler?

A. at that time—

Q. Yes.

A. (Continuing)—you have in mind?

Q. Yes, either on November 7th or 8th or any time you were talking to Mr. Fidler about Defendants' Exhibit 9?

A. I don't have any such, no. I don't have that with me, no.

Mr. Freeman: Mr. Lindsey, do you have the original drawings of Snap-On Defendants' Exhibits 22 and 22-A? (Drawings handed to counsel.)

Q. I now hand you a drawing which has been marked Defendants' Exhibit 22 and also what appears to be a part of that drawing marked Exhibit 22-A, and will ask you to state whether or not the two parts constitute a drawing which you gave to Mr. Fidler for the purpose of making a comparison between the drawing you have in your hand, Defendants' Exhibit 22, and Defendants' Exhibit 9.

(Handing Exhibits to witness.)

A. It is.

Q. That drawing is witnessed, referring to the part, 592 22-A, by Mr. Fidler, November 8, 1940. Do you recall whether or not that endorsement or signature by Mr. Fidler was put on at his office or at his home?

A. At his home.

Q. In your presence?

A. In my presence.

Q. And had the drawing been delivered to Mr. Fidler the preceding night, that is, Thursday evening, November 7, 1940?

A. I believe it was delivered the date it bears is when it was delivered.

Q. And did Mr. Fidler ask you then on November 7th to bring over some drawing the following evening for the purpose of comparison?

A. I don't remember that he asked for it.

Q. Now, I wish you would tell us just what took place and what you told Mr. Fidler, first, on November 7, 1940, with respect to the facts having to do with the dates of the interference?

A. What I told him with respect to the dates?

Q. Yes.

A. I don't know what I told him unless it is in the transcription you have before you.

593 Q. Well, just what did you tell him aside from what we now have in the affidavit?

A. I don't know. I suggest you read them off. I don't remember exactly.

Q. You did tell Mr. Fidler on November 7, 1940 that you were responsible for the subject matter of the Larson Application, is that correct, that you were the inventor or whatever had been done you done?

A. I conceived the idea, if that is what you mean?

Q. You were the father of the idea?

A. It was my conception.

Q. You told that to Mr. Fidler?

A. That is correct.

Q. What was his answer when you made that statement?

A. I don't remember his answer.

Q. Did you tell Mr. Fidler when you first met Larson?

A. No, I don't remember exactly when I first met him. It dates back sometime ago. I don't remember when I first met him.

Q. When did you tell Mr. Fidler then that you had made the drawing, Defendants' Exhibit 9, and that it wasn't made by any high school boy?

594 A. Possibly November 7th when the affidavit you have before you probably states.

Q. Did Mr. Fidler ever tell you that he was going to submit the drawing, Defendants' Exhibit 22, to a handwriting expert for the purpose of making a comparison?

Mr. Lindsey: Now, if your Honor please, I object to this entire line of examination. He is cross-examining this witness on an affidavit that the witness has made. This isn't direct examination. Show the witness the affidavit. Why cross-examine him on that? Are you trying—

Mr. Freeman: I am not asking him any questions with respect to this affidavit. I am asking him what he told Mr. Fidler and what Mr. Fidler told him.

The Court: And his reply to that was it was all contained in that affidavit.

Mr. Lindsey: Right.

The Court: Wasn't that your answer, Mr. Witness?

The Witness: Yes, sir, your Honor.

Mr. Freeman: Your Honor, I was in hopes I might save some time. I don't like to burden this court in reading an 84-page affidavit and, yet, there are certain points we want to bring out and I still want the court to have the 595 benefit of this full picture of this affidavit.

The Court: Hasn't somebody introduced the affidavit?

Mr. Fidler: It is in evidence as a defendants' exhibit.

The Court: Whether it is a burden on me or not, I can't evade it, can I?

Mr. Freeman: We are trying save as much time as we can.

The Court: I don't see the logic of you proceeding now to ask questions on the affidavit. That is pure cross examination. I understand this is your witness and he is on direct examination.

Mr. Freeman: Q. Well, following the evenings of November 7th and 8th, 1940, when you gave the substance of the present affidavit, Defendants' Exhibit 21, you had a meeting with Larson and Carlsen about the anonymous telephone call, letter?

A. I believe Larson and Carlsen contacted me after this had been compiled.

Q. And, so that we have the record straight, the last two pages of the affidavit, that is, the subject matter therein stated, you passed on to Mr. Fidler after your meeting with Mr. Carlsen and Mr. Larson?

A. That is right.

Q. And did you give that information to Mr. Fidler 596 direct or to the investigators?

A. I gave that to Mr. Baumann.

Q. And the last two pages of the affidavit is a correct statement of what you gave to the investigator?

A. That is the substance of what I gave, yes.

Q. Who arranged for the execution of this affidavit, Defendants' Exhibit 21?

A. By "execution," you mean what?

Q. The signing of it?

A. I believe I mentioned to you that was arranged by Mr. Baumann and a companion of his, a man with him that evening by the name of Schmid.

Q. That was executed by a notary in Des Plaines?

A. That is right.

Q. Who asked you to endorse the date on each of the 84 pages of the affidavit and your initials on each of the 84 pages of the affidavit?

A. Mr. Schmid.

Q. And the editing that appears in the affidavit, so we understand what I mean by editing, the longhand notations made over the typewritten matter, when did you make those?

A. Notations?

597 Q. Yes.

A. The same evening that the document was notarized.

Q. Now, have you ever talked to Mr. Fidler subsequent to the making of this affidavit with respect to any changes that might be incorporated in the affidavit?

A. Changes of grammar or errors of transcription that might be in there, trivial changes.

Q. Did you make any such changes or suggestions for changes after November 15, 1940?

A. I don't know whether they appear there or not but they were done as recent as—I think it was down in February, I am not certain of that.

Q. 1943?

A. That is right?

Q. Will you look at the affidavit and tell us now whether or not any of the changes you talked about or discussed in February, 1943 are incorporated in that affidavit?

(Handing paper to witness.)

Mr. Freeman: I might be a good time to take a five-minute recess while this witness looks through the affidavit.

The Court: All right. There are 84 pages there. It may be we had better take a ten-minute recess.

(A short recess was had after which the following occurred:)

598 Mr. Freeman: Will you read the question, now?

(Question read by the reporter.)

The Witness: A. No, I do not see them here.

Mr. Freeman: Q. And at whose suggestion was it that you checked the affidavit as to any errors therein, in February of 1943?

A. Mr. Fidler's.

Q. Did he call you to come down to his office?

A. He did.

Q. And were you paid for that time?

A. I was not.

Q. Now, you finally did sell your stock in Precision Instrument Company, did you not?

A. I finally got rid of it, yes.

Q. Why do you say you got rid of it?

A. I do not have it any more.

Q. Well, you really sold it, then?

A. I received some money for it, yes.

Q. And you received \$500.00?

A. A paltry sum, yes, \$500.00.

Q. Well, that was an Automotive Maintenance check, was it not, or was it a Davis, Lindsey, Smith & Shonts check?

A. David, Lindsey, Smith & Shonts check.

599. Q. Now, after the signing of this affidavit on November 15, 1940, when did you next see Mr. Fidler?

A. At his office, shortly after that. I do not remember that date. I believe that was the date you fixed as November 28th, at a conference in Mr. Fidler's office.

Q. And that was the conference where Mr. Alberts and Mr. Johnson, Mr. Wacker and Mr. Fidler was present; is that correct?

A. And Mr. Allen was also present.

Q. Any one else there?

A. Myself.

Q. And your wife came down with you at that time?

A. My wife accompanied me to the city; however, she did not sit in on the conference.

Q. And at the conference on November 28, 1940, what took place there; just tell us as briefly as you can.

A. I was introduced and then questioned by Mr. Fidler concerning the affidavit. And I answered his questions.

Q. And were you there asked whether or not you made the drawing, Defendants' Exhibit 9?—And I am now referring to the conference of November 28, 1940, where Mr. Alberts and Mr. Johnson, representing Snap-On, were present.

A. Yes.

600 Q. And you told them then that you made Defendants' Exhibit 9?

A. I did.

Q. Had you ever told Mr. Johnson or any one connected with Snap-On that you were interested in Precision Instrument Company, prior to the signing of this affidavit on November 15, 1940?

A. Did I tell them?

Q. Yes.

A. No, I did not.

Q. Were you cautioned by any one as to whether you should make it known to either Mr. Alberts or Snap-On, that you were either interested or a stockholder in Precision?

A. I was not cautioned not to tell them, no.

Q. Didn't Mr. Larson tell you not to tell Snap-On that you were connected with Precision?

A. He didn't tell me not to tell them; he said he didn't want them to know it.

Q. Did he tell you why he didn't want them to know it?

A. His reason offered to me was that Snap-On would discontinue the purchase of the wrenches.

Q. And didn't he tell you that Snap-On wanted no connection with any one that had any connection with Automotive?

601 A. Something to that effect, yes.

Q. And that if Snap-On had found out that you were connected with Automotive, and likewise connected with Precision, Snap-On would cancel the agreement?

A. He said they would; but I don't believe they would have.

Q. I am just asking you what he told you.

A. He did, yes; that was his claim.

Q. And you never made that fact known to any one connected with Snap-On, or to its counsel; that is, your connection with both Precision and Automotive?

A. I did not.

Q. And that connection became known after your disclosure of the facts to Mr. Fidler on November 7th and 8th, 1940?

A. I believe that is right.

Q. Some time after that?

A. I believe that is right.

Q. How long were you at the meeting with Mr. Fidler, Mr. Wacker, Allen, and Johnson and Alberts on November 28, 1940?

A. As I remember, we were to meet at 10:00 o'clock that morning; and it lasted until possibly 2:00 or 2:30 that afternoon, with no interruption.

Q. And were you examined at length by Mr. Fidler 602 as to your activities in connection with the Larson development?

A. I was questioned at length, yes.

Q. And were you then shown the drawing, Exhibit 22? And I am holding in my hand a photostat; I mean the original, for the purpose of comparison with Defendants' Exhibit 9.

A. I believe the original of that drawing was in that office that day, yes.

Q. And Mr. Fidler questioned you as to whether or not you made the drawing, Exhibit 22, at that time in the presence of—

A. I am not certain whether he asked me whether I made it, or not.

Q. Do you recall Mr. Fidler's using that drawing, Defendants' Exhibit 22, in the presence of Mr. Alberts and Johnson, at the time you were examined by Mr. Fidler on November 28, 1940?

A. They may have; I am not certain.

Q. Now, just tell us what Mr. Fidler asked you; that is, this conference where you were examined lasted for some few hours; what Mr. Fidler asked you in the presence of Mr. Johnson and Mr. Alberts.

A. I don't remember what he asked me; it was all 603 pertaining to what is between these two covers; and I answered his questions.

Q. In other words, Mr. Fidler used as his text that morning the affidavit which you had executed on the 15th of November, 1940?

A. I don't know whether he referred to it constantly or not; he was sitting at the opposite end of the room, and he put the questions and I answered them.

Q. Well, can you tell us the general substance of that; would you say that the subject matter of your answers, and the questions put to you by Mr. Fidler on November 28th, in the presence of Mr. Johnson and Mr. Alberts, is substantially that which we now have in this affidavit?

A. That is correct.

Q. And at that time was the original drawing of Defendants' Exhibit 9 there, or did you have a photostat?

A. There was a photostatic copy on a desk, spread out on a desk.

Q. And you then said positively that you made the drawing?

A. I believe I did.

Q. And that positive statement was made in the presence of, and in the hearing of both Mr. Alberts and Mr. Johnson?

604 A. Yes.

Q. Now, when after the meeting of November 28, 1940, did you next meet Mr. Fidler?

A. I don't remember the date; it was shortly after that, when I was called in to ask whether or not I would relinquish my stock.

Q. And do you recall just when that was?

A. It was after November 28th; I do not remember the exact date.

Q. Did they tell you what they wanted the stock for?

A. No; I had received a letter on the stationery Haight, Goldstein & Hobbs, demanding that I surrender my stock that I was holding illegally.

Q. And you turned that stock over to Mr. Fidler?

A. Not that same day.

Q. Well, shortly thereafter.

A. Shortly thereafter.

Q. And you received the sum of \$500.00?

A. I received a receipt for same.

Q. Did you make any inquiry as to why Mr. Fidler was buying the stock, you having been turned down on numerous occasions where you wanted to sell it to Automotive?

A. I didn't know who was getting it; I assumed Snap-On was paying for it; I didn't know who it was.

605 Q. That didn't tell you?

A. They did not.

Q. They merely asked you to dispose of the stock for \$500.00, and you said yes; and you received the five hundred?

A. I received a receipt for it first, and later I received a check for \$500.00 for my receipt.

Q. You gave them a receipt for \$500.00 first.

A. I gave them the stock certificate, and they gave me

a receipt; and later I gave them the receipt in return for their check.

Q. And when you delivered the stock, or the transaction was completed, you didn't know who was getting the stock?

A. I did not.

Q. And they never told you?

A. At that time, no, they did not.

Q. Have they told you since?

A. As I understand now, all of the stock went back to Precision Instrument Company, so I have been told.

Q. And who told you that?

A. Different ones have told me that; others that have had stock said they got their money back.

Q. Did you ever make inquiry from Mr. Fidler?

A. I did not.

Q. Now, after that, when did you next meet and confer with Mr. Fidler?

A. On what account?

Q. Oh, in connection with any of the information that you had given him; or any of the—

A. I believe that closed the matter, when I received my check.

Q. Well, now you continued to have some correspondence with Mr. Wacker with respect to other developments, did you not?

Mr. Lindsey: I object, your Honor. That has nothing to do with his subject of perjury; the witness has testified that closed the matter, so far as he was concerned. These other developments do not enter into the picture at all.

The Court: How are they material?

Mr. Freeman: Well, your Honor, they are material; and we have examined Mr. Thomasina at Mr. Fidler's office, and we have here a receipt for \$200.00 paid to Mr. Thomasina; and when I asked Mr. Thomasina about that \$200.00, he didn't know whether he was going to get \$50.00 or \$100.00. Mr. Fidler called him up and just asked him if that would be ample. And I think it is important that your Honor have the full picture as to just what took place in this case. And we are not going to take long; we will be through in another twenty minutes. We should get the information before the Court.

Mr. Lindsey: If your Honor please, these later developments haven't got a thing to do with the case; and it does

not matter what we paid this witness, whether we paid him \$200.00 or \$10,000 for what we did: It is simply an attempt and the sole attempt, and it has been that way through these depositions,—and say this advisedly and without heat—there has been an attempt to smear opposing counsel for what happened subsequently; and there is no substance to it.

Mr. Freeman: I can answer that: In the opening statement made here by Mr. Smith it was clear they were going to show they never 100 per cent believed Mr. Thomasma about making this drawing, by which they can thus deny they had any knowledge of the perjury; and we want to show that they had confidence in Mr. Thomasma, because they continued business relations with him throughout, of a confidential kind. And when Mr. Wacker wanted certain information about what Precision was doing, even though he had a contract with Precision, he called upon his friend, Mr. Thomasma, to go out and get that information. And I think it is very important. Because in one breath they say we could not believe him; they only had suspicion; it 608 was not definite. Yet, they were satisfied to use and operate with Mr. Thomasma throughout upon a business relationship of the kind that is more or less of a confidential character. And I think that is what we want to show; and it does tie up with what has gone on before, and I think it is very pertinent.

The Court: All right; go ahead and ask the question. But I think you have spent a lot of time on that, that I am unable to see the relevancy; but maybe I missed the last point here.

Mr. Freeman: Q. After the Larson patent issued did Mr. Wacker send you, or have a copy of the Larson patent sent to you?

The Witness: A. By—

Q. Mr. Fidler?

A. By copy of Larson patent, you mean what, do you have a copy there that I may see?

Q. Do you recall receiving a letter from Mr. Fidler stating that he was sending you a copy of the Larson patent, in accordance with instructions that he received from Mr. Wacker?—Do you have the original of that correspondence?

Mr. Hibben: What is the date of that letter?

Mr. Freeman: It was a letter that you sent me 609 the other day, Mr. Fidler.

Mr. Fidler: Is this the letter, Mr. Freeman?—Its text is not exactly as you have stated.

Mr. Freeman: I will read the letter; I may not have stated the text exactly: 'Tis is a letter April 20, 1942, addressed to George Thomsma, Park Ridge, Illinois; "Dear Mr. Thomsma: At Mr. Fidler's request, I am enclosing a copy of the recently issued Larson Patent No. 2,279,792." You received such a letter?

The Witness: A. I received it.

Mr. Freeman: Q. And you wrote to Mr. Fidler and acknowledged receipt of that letter, did you not; that is a copy of the patent?

A. Yes.

Q. Now, on April 16th, 1941, you wrote to Mr. Wacker with respect to being reimbursed for some time and material that you had used in connection with some developments; that is correct, is it not?

A. Yes.

Q. And do you recall Mr. Wacker's reply to you?—You may have it; it is the letter of April 21, 1941.

A. I have it here, yes.

Mr. Freeman: I might, for convenience, read Mr. Thomsma's letter of April 16, 1941, which has heretofore been referred to as Defendants' Exhibit No. 29, —aside from the heading:

"Dear Mr. Wacker: I am in receipt of your letter dated April 1. I am pleased to note your comment on drawings and models sent through Mr. Fidler. I am sorry my power drive can not be patented. Mr. Fidler assures me I will be reimbursed for time and material.

"The range of my surfacing hone is 2 1/2" to 4 1/2".

"I believe springs can be shaped to reduce corner wear on stones to a minimum.

"Experiments with impregnated felt and abrasive stones combined will prove satisfactory.

"In a recent telephone conversation with Mr. Fidler I mentioned your letter. Mr. Fidler promised to arrange a conference as soon as his plans will permit.

"I have several ideas I will submit for discussion.

"Thanking you, I am, Yours truly, George B. Thomsma.

Mr. Lindsey: I move it be stricken. It is not material.

Mr. Freeman: It follows along the lines—
611 The Court: Let it go in; we will perhaps save time.
Go ahead.

(Said letter so offered and received in evidence, was marked DEFENDANTS' EXHIBIT NO. 29.)

Mr. Freeman: Q. And you received a letter dated April 21, from Mr. Wacker; is that correct?

The Witness: A. That is right.

Mr. Freeman: I now read that letter, as Defendants' Exhibit 30.

(Said letter so offered and received in evidence, was marked DEFENDANTS' EXHIBIT NO. 30.)

Mr. Freeman: The letter is addressed to George B. Thomasma, Park Ridge, Illinois.

"Dear George: Replying to your letter of April 16 will state that we are only interested in the development of tools or products that we can add to our line and we have never had in mind that you would go ahead with experiments that we had not authorized and then have you expect to be reimbursed for the cost of these experiments.—"

And I am going to skip the rest of the letter and I am going to read the last part of the letter.

612 The Witness: I suggest you include the second paragraph, Mr. Freeman, please.

Mr. Freeman: I will read the whole letter, then.

The Witness: Please.

Mr. Freeman: After reading the first paragraph,—

"As previously stated, however, we are definitely interested in making an arrangement with you on any new developments that will be of commercial value to us.

"In this connection we are very much interested in the development of your surfacing hone. In your letter of April 16 you state that the range of your surfacing hone is 2½" to 4½".

"I turned the body and drawings of this tool over to one of our engineers and asked him for his suggestion of a suitable spring to give your surfacing hone the same range as our own. Our range as you will recall is from 2-11/16" to 4½".

"After making a number of layouts our engineer reported that in his opinion it would require four sets of springs that would have to be put on and taken off for different diameters to cover the full range above mentioned.

"Accordingly, we will appreciate receiving from you 613 a sketch of a suitable spring to cover the range mentioned in your letter as we, frankly, don't know how to work it out.

"You have no doubt studied this situation and have some definite ideas in mind; and we will be glad to complete and test the tool if you will give us a sketch of the spring that will layout satisfactorily on paper to cover the full range without taking all the wear on the corners at the low and high points of expansion.

"Incidentally, I am wondering what Precision is doing by way of manufacturing wrenches and whether or not they have developed a new model of wrench.

"With kindest regards, Very truly yours, Automotive Maintenance Machinery Co., by Fred G. Wacker, President."

Q. You were on friendly terms with Mr. Wacker after you sold your stock in Precision Instrument Company, were you not?

The Witness: A. I was.

Q. And all of his letters addressed you as Dear George, do they not?

A. That do.

Q. And you even received a letter from Mr. Wacker 614 while he was down at Hot Springs, Arkansas?

A. I did.

Q. In reply to a letter you had written to his office?

A. I have it here.

Q. You received a letter from Mr. Wacker while he was at Hot Springs?

A. That is right; I have it here.

Q. You were asked by Mr. Wacker to check into what Precision was doing as late as June 25, 1941, were you not?

A. Yes; I have that here.

Mr. Freeman: And I will read a letter dated June 25, 1941, which is Defendants' Exhibit No. 17.

(Said letter so offered and received in evidence, was marked DEFENDANTS' EXHIBIT NO. 17.)

Mr. Freeman: A letter addressed to George B. Thomas, Park Ridge, Illinois.

"Dear George: We are wondering if Precision is living up to its agreement to discontinue manufacture of Torquometers after the specified quantity per our settlement agreement with them had been produced. In other words, how

many wrenches of this type have they made since the 615 settlement and how many more do they intend to make?

"Do you know of any way by which we could secure accurate information in this respect?

"With kindest regards; Very truly yours, Automotive Maintenance Machinery Co., by Fred G. Wacker, President." —

Q. Did you answer that letter?

The Witness: A. I am not certain whether I did or not.

Q. Do you recall writing Mr. Wacker on July 1, 1941?

A. I may have; I do not have a copy of it.

Q. Well, I show you a copy, or a photostat of a letter dated July 1, 1941, and will ask you if that is a letter that you sent to Mr. Wacker, and if it is in your handwriting?

A. Yes, that is my handwriting.

Mr. Freeman: And I now read Defendants' Exhibit No. 18.

(Said letter so offered and received in evidence, was marked DEFENDANTS' EXHIBIT NO. 18.)

Mr. Freeman: A letter from Thomasma to Fred Wacker:

"Dear Mr. Wacker: I reply to yours of June 25, regarding P. I. M. Co. I have secured some information and expect more about July 5. Will you let me know 616 when I may see you as I believe I can tell you more in person than I could by letter. I prefer evening or week end when and where you may select. Very truly yours, George B. Thomasma. P. S. I am pleased to do all I can in this matter for you." —

Q. Now, do you recall writing such a letter?

The Witness: A. I do.

Q. That P. I. M. Co. that is the Precision Instrument Manufacturing Company?

A. That is right.

Q. And that letter that you wrote on July 1 was definitely in reply to Defendants' Exhibit No. 17, the letter written you by Mr. Wacker, where he wanted you to dig up some information?

A. Yes.

Q. And did you get the information that Mr. Wacker wanted?

A. I knew they were still making wrenches.

Q. And what did you have to tell Mr. Wacker, which you could tell him better in person than you could in writing?

A. That there was activity at the plant, that they were still building wrenches, material going in the plant to build wrenches.

617 Q: And was there a meeting arranged between you and Mr. Wacker, where you conveyed the information to him that you did not want to put in your letter of July 1, 1941?

A: I believe I talked to Mr. Wacker by telephone; he was downtown for the day; and asked if I could see him downtown; which I did. I met him at the Sherman, and we lunched together, spent possibly an hour or two together.

Q: And did you then give him information that he had requested you to dig up on June 25, 1941?

A: I did.

Q: Would you mind telling where you obtained the information as to what Precision was then doing?

A: I cannot give you that information. Your Honor, that is of a confidential source; and I cannot tell you where I got it.

Mr. Lindsey: It has no materiality, your Honor please.

Mr. Freeman: Q. Do you recall writing to Mr. Fidler on June 24, 1941?—And I now hand you a photostat of a letter marked Defendants' Exhibit 46; you have the original thereof; or at least, there is an original here available.

The Witness: A. That is my letter.

Q. And will you look at the last paragraph of that letter, which I would like to have you read and tell us what arrangements were made through Mr. Travis with respect to payment?—On the second thought, I will read the letter, so that the Court might have the full information; letter dated June 24, 1941, from George B. Thomasina to R. F. Fidler.

(Said letter so offered and received in evidence, was marked DEFENDANTS' EXHIBIT NO. 46, and read by counsel.)

Mr. Freeman: Q. And I now ask you what arrangements were made for you with Mr. Wacker by Mr. Travis in connection with being repaid?

The Witness: A. That anything that I might make, I would be paid for if I submitted it to him.

Q. And the letter that I just read is June 19, 1941; and there was a deal or a promise made through Mr. Travis

by Mr. Wacker last year; so that was in 1940, is that correct?

A. It sounds correct.

Q. Well, can you tell us now when that promise was made through Mr. Travis?

A. I don't remember when he made that promise, 619 but he did say that anything I would make and submit to them, he would pay for it.

Q. That is, Mr. Wacker told you that, or he told you that through Mr. Travis?

A. You are talking for Mr. Travis now?

Q. Yes.

A. That is it.

Q. Isn't it a fact that that promise was made to Mr. Travis, prior to the time you went to Mr. Fidler's home on November 7th and 8th and gave him the information we now have in the affidavit of November 15th, 1940?

Mr. Fidler: Object to the cross-examination of this witness.

Mr. Freeman: Q. Tell us when the promise was made. The Witness: A. I don't remember exactly.

Q. That is your best recollection?

A. That is right.

Q. You do recall now, though, that the promise was made by Mr. Wacker through Mr. Travis?

A. I don't remember the promise was made to Mr. Travis by Mr. Wacker, but Mr. Travis and I talked about what I would do with some of the other things I had.

Q. And do you have the letter of June 30th to Mr. Fidler, Defendants' Exhibit 49?

620 A. From me to Mr. Fidler?

Q. From you to Mr. Fidler.

A. No, I do not.

Q. I hand you a photostatic copy, for your convenience.

A. Yes, that is mine.

(Said letter so offered and received in evidence, was marked DEFENDANTS' EXHIBIT NO. 49.)

Mr. Freeman: And I now read Defendants' Exhibit 49, a letter from Thomasma to R. E. Fidler:

"Dear Mr. Fidler: I have your letter of 6-27 with my drawings.

"Mr. Wacker wrote two letters on June 25th. One, I am pleased expresses his sentiments regarding my model hone also my efforts in this direction.

"The other a request for information. I will gladly do all I can to secure all information and forward same to him at once.

"I know of no person I would rather submit my developments to and if they appeal to him I assure you again Mr. Wacker has first choice.

"Thanks again.

"Very truly yours, George B. Thomasma."

Q. And will you now turn to your letter to Mr. 621 Fidler, of December 1, 1941, reading as follows:

"Dear Mr. Fidler: Please sign dial and page out of magazine enclosed as per our telephone conversation of even date. Yours very truly, George B. Thomasma."

Do you find such a letter?

A. I have a photostatic copy of it here.

Q. And that is a letter written by you to Mr. Fidler?

A. That is right.

Q. And do you recall whose dial it was that was enclosed in that letter?

A. Do you have the dial?

Q. No, I am just asking if you recall.

A. I do not remember.

Mr. Freeman: Do you have the dial, Mr. Fidler?

Mr. Fidler: I am not certain whether I have it or not.

Mr. Freeman: Q. Do you recall whether or not it was a Precision Instrument Company dial of the Torquemeter wrenches made by Precision Instrument Company?

The Witness: A. Bearing their name?

Q. Well, one of the dials that they used on their present tools.

A. I don't remember; I don't know. I don't know what you have reference to.

622 Q. Well, I am just trying to find out whether or not that was a Precision Instrument dial or not.

A. I don't know, if you do not have it there; I am not certain.

Mr. Freeman: Can you tell us, Mr. Fidler, if it was a Precision Instrument dial?

Mr. Lidnsey: Oh, go ahead; it has no materiality.

The Court: Yes, the objection is sustained. Let us have another question.

Mr. Freeman: Q. In 1942; in June of that year you received \$200.00 from Mr. Fidler, did you not?

The Witness: A. I did.

Q. And do you recall what that was for?

A. That compensated in part for money that I spent in making several models that I made and submitted to Mr. Wacker.

Q. And I am correct in my understanding that when that money was paid you, you didn't know shortly prior thereto whether you were going to get \$50.00 or \$100.00, or what you were going to get; is that correct?

A. That is right.

Q. And I am correct in that Mr. Fidler called you and asked you whether \$200.00 would be ample?

A. If that would cover it, or suffice.

623 Q. And you had never asked him for any specific amount prior to that time

A. I have never asked for any specific amount.

Q. And at that time you signed a receipt, of which I now hand you a photostat, Snap-On's Exhibit 27; is that correct?

Mr. Lindsey: Object; no materiality whatsoever, if your Honor please.

The Court: Let it go in; we will, perhaps save time.

(Said document, so offered and received in evidence was marked Snap-On Exhibit No. 27.)

The Witness: A. Yes, sir.

Mr. Freeman: Q. And that \$200.00 was delivered to your home in Park Ridge on Saturday evening by Mr. Fidler?

A. That is right.

Q. And had you made inquiry from Mr. Wacker about getting a shaper or a tool on a lend-lease basis at one time?

A. I did try to purchase, borrow or lease a shaper from Mr. Wacker; yes.

Q. You were turned down?

A. He wrote me a letter stating that he could not sell me one; he could not give or lease me one at that time.

624 All the machines that they were delivering were scheduled for orders far in advance; and unless I could dig up a priority number to cover one, he could not sell me one at that time.

Q. And later on did you have delivered to your home one of these tools, without a priority?

A. Not a new one.

Q. A second hand one?

A. A used model, that had been used for demonstration

purposes, and experimental purposes; and I was asked if that would serve my purpose until such time—

Q. Who asked you whether that would suit your purpose?

A. Mr. Fidler.

Q. That is, it was through Mr. Fidler that Automotive sent you a shaper, a second hand one?

A. A used shaper; yes.

Q. And that was after you were turned down by Mr. Wacker?

A. On the purchase of a new one, yes.

Q. And that was given to you at or about the time that you executed the receipt, Defendants' Exhibit No. 27; is that correct?

A. It was delivered to my home prior to that; yes.

Q. A couple of weeks prior to that time?

625 A. A few days, possibly.

Mr. Freeman: That is all. I might say, we will want to offer these letters, if we have not already offered them. I notice I have taken too much time already. Might we do that in the morning, your Honor?

Mr. Lindsey: No cross-examination.

(Witness excused.)

626 Mr. Ooms: I would like at this time, if your Honor please, to offer into evidence the exhibits referred to by the witness Thomasma during his testimony yesterday.

As Defendants' Exhibit 21, Mr. Thomasma's affidavit.

As Defendants' Exhibit 26, the series of invoices of John A. Wise and Son which were referred to by the witness Wise.

As Defendants' Exhibits 22 and 22-A, the drawing which was identified by the witness Thomasma.

As Defendants' Exhibit 29, a letter of April 16, 1943 from the witness Thomasma to Mr. Wacker.

As Defendants' Exhibit 30, a letter from Mr. Wacker to Mr. Thomasma of April 21, 1941.

As Defendants' Exhibit 17, a letter of June 25, 1941, from Mr. Wacker to George B. Thomasma.

As Defendants' Exhibit 18, a letter of July 1, 1941, from Mr. Thomasma to Mr. Wacker.

As Defendants' Exhibit 46, a letter of June 24, 1941, from Mr. Thomasma to Mr. Fidler.

As Defendants' Exhibit 49, a letter of June 30th from Mr. Thomasma to Mr. Fidler. I don't have the year there. That is June 30, 1941.

As Defendants' Exhibit 50, a letter of December 1, 627 1941 from Mr. Thomasma to Mr. Fidler.

As Defendants' Exhibit 27, a receipt signed by George B. Thomasma for a shaping machine and \$200.

The Court: If there is no objection, they may be received.

Mr. Lindsey: No objection.

Mr. Fidler: No objection.

(Said documents, so offered and received in evidence, were marked, respectively, DEFENDANTS' EXHIBITS NOS. 21, 26, 22, 22-A, 29, 30, 17, 18, 46, 49, 50 and 27.

Mr. Ooms: Mr. Walter Carlsen, please.

WALTER CARLSEN, called as a witness on behalf of the defendants herein, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Ooms.

Q. Will you please state your name?

A. Walter Carlsen.

Q. Where do you live, Mr. Carlsen?

A. 309 Washington Street, Park Ridge.

The Court: Speak louder, please.

628 The Witness: 309 Washington Street, Park Ridge.

Mr. Ooms: Q. What is your occupation?

A. I am in the manufacturing business.

Mr. Ooms: I might suggest, your Honor, the witness has a little bronchial trouble and if he isn't always heard, we won't mind repeating.

Q. Is the name Walter Carlsen your legal name?

A. No, it isn't.

Q. What is your legal name?

A. Palis.

Q. Is your legal name—

The Court: What do you mean by "legal name"?

Mr. Ooms: The name under which he was naturalized, born and christened. I am about to explain.

The Court: Oh.

Mr. Ooms: Q. Your legal name is Walter Palis?

A. Yes.

Q. You were naturalized in the United States District Court under that name?

A. Yes, sir.

Q. How is it you use the name of Walter Carlsen?

A. My wife started in the beauty shop at Arlington Heights and it was the Carlsen Beauty Shop and everyone called us Carlsen and it has been Carlsen ever since.

Q. When did you take over that beauty shop?

A. 1932.

Q. What name do you use in your business other than the beauty shop?

A. Mostly Carlsen.

Q. Do you own any real estate?

A. Yes.

Q. What name is that under?

A. Palis.

Q. Are you registered for voting in Illinois?

A. No.

Q. What company are you connected with, Mr. Carlsen?

A. The Precision Instrument Manufacturing Company.

Q. What is your office there?

A. Secretary-treasurer.

Q. How long have you been secretary-treasurer of that company?

A. Since December, 1938.

Q. Do you recall the Interference of Larson vs. Zimmerman, which we have referred to here?

630- A. I do.

Q. Did you testify in that Interference?

A. I did.

Q. Was your testimony ever transcribed that you gave in that Interference?

A. Not that I know of.

Q. Well, in that case did you testify about when Mr. Larson had some torque wrenches?

A. I did.

Q. Do you recall any of the years you fixed when he first had torque wrenches?

The Court: Let me ask, are you going to ask this man questions that might incriminate him?

Mr. Ooms: I don't intend to, your Honor.

The Court: You understand you don't have to answer any questions that might incriminate you, don't you?

The Witness: Yes, sir.

Mr. Ooms: He is an officer of one of these companies.

The Court: I don't care what he is. He is not going to come upon the stand and testify against himself.

Mr. Ooms: Q. Are you the Walter Carlsen who was named as a defendant in this case originally?

Q. A. Yes, sir.

Q. You have subsequently been dismissed as a defendant?

A. Yes, sir.

Q. Mr. Carlsen, I want to direct your attention to a time in November, 1940, when all of the testimony in the Interference had been taken. Do you recall that period of time?

A. Yes, I do.

Q. Do you recall at that time a letter received by Precision Instrument Company from Harry Alberts?

A. Yes, I believe I do. We had several letters from him around about that time.

Q. Do you recall a letter of about that time received on November 11, 1940 (handing paper to witness.)?

A. Yes.

Mr. Ooms: I have handed the witness Defendants' Exhibit 62, a letter from Harry C. Alberts to Precision Instrument Manufacturing Company, Des Plaines, Illinois, which has been read in the record here and is the letter which states that Mr. Alberts had received an anonymous telephone call about the testimony in the Interference.

Q. When did you first see that letter, Defendants' Exhibit 62?

A. I think it was around the middle of November, probably, just before the middle of November. I open all the mail at Precision and, of course, it would come to my attention first.

Q. Do you recall what was done with this letter?

A. I left it on the desk and Mr. Larson took care of it. I think he called Mr. Alberts about it.

Q. Do you recall exhibiting that letter to anybody but Mr. Larson?

A. Yes, I do.

Q. To whom?

A. To George B. Thomasma.

Q. When was that?

A. That was the next day, I believe, after the letter was received.

Q. Will you tell us the circumstances of that?

A. Well, we went to see George B. Thomasma about this letter and we confronted him with it and asked him at the time whether he knew this Mr. Krichiver from whom we presumed that the letter was—that the telephone call was by, and he told us at that time that he couldn't do 633 any more about it because it was too late.

Q. Did he explain why it was too late?

A. No, he didn't. He just insisted it was too late, he couldn't do any more about it.

Q. Do you recall having had a pretrial deposition taken in this case?

A. Yes, sir.

Q. Do you recall being examined about this letter?

A. Yes, sir.

Q. What did you testify at that time?

A. At that time I said we hadn't showed it to George B. Thomasma and later on when I got back and talked it over with Mr. Larson, why, I recalled we had shown it to him.

Q. Is that your explanation for the difference between your testimony now and then?

A. Yes, sir.

Q. What next occurred with respect to this interference after you talked to Mr. Thomasma on or about November 12, 1940?

A. I think we got a telephone call from Mr. Alberts asking us to come down to his office.

Q. Do you recall about when that was?

634 A. It was along in the middle of November.

Q. Did you go to his office?

A. Yes, we did.

Q. Who went there?

A. Mr. Larson and myself.

Q. Whom did you see there?

A. Mr. Alberts and Mr. Johnson.

Q. That is Mr. Joseph Johnson of Snap-On Tools Corporation?

A. Yes, sir.

Q. Tell us in your own words, Mr. Carlsen, what occurred there at that meeting.

A. Well, Mr. Alberts asked Mr. Larson if the testimony he had given in the case was true and he didn't say much of anything and then he confronted him with a drawing and told him—

Q. Who confronted who?

A. Mr. Alberts confronted Mr. Larson with a drawing and told him about a drawing that was offered as an exhibit in the testimony that was given and Mr. Alberts said he wanted to know whether it was true, whether it was true he had made it or Mr. Thomasma had made it.

And after, oh, some other words and a little discussion, why, Mr. Larson finally admitted that Mr. Thomasma 635 did make the drawing.

Q. What else was said at that meeting?

A. Well, he told us at the meeting there that if the things we had said in the testimony wasn't true, we had better get ourselves a lawyer, he didn't want any more to do with it.

And Mr. Larson asked him then if he wouldn't suggest some lawyer for us and Mr. Alberts gave us a list of three gentlemen he knew and we took the one at the top of the list who was the closest to us and went to see him that afternoon.

Q. Whom did you go to see?

A. Mr. Hobbs.

Q. What occurred there?

A. Well, we went over and told Mr. Hobbs just exactly what had transpired.

Q. Tell us, if you can, the conversation that occurred there.

A. Well, we told him that we had given testimony in the deposition that wasn't exactly true and we felt like we were in a very bad spot and told him the story as well as we could and, after considerable discussion, why, he said he would follow up Mr. Fidler or go see Mr. Fidler and see what he could do.

636 Q. What occurred after that. Just tell us everything you can as to what occurred in that period.

A. Well, from there on we went on home and I think we got a letter the next day or the following day to come down and see him or else a telephone call, I just don't recall which it was, and we went down the next day to see him and he had some sort of an agreement there that just wasn't the type of agreement anyone would sign.

Q. Just when was this?

A. This was on the second time we had gone to see him, about a week or less than a week, I believe it was, or just about a week, I imagine it was, after the first call we made on Mr. Hobbs.

Q. Did you see any of the correspondence that passed between your company and Mr. Hobbs?

A. I opened it but I didn't pay much attention to it.

Q. Did you read the letters?

A. Yes.

Q. I show you a letter which is in evidence here as Defendants' Exhibit 63, and a companion draft of a letter, Defendants' Exhibit 64, and ask you whether you have seen those before?

(Handing papers to witness.)

637 A. Yes, I have.

Q. When did you see them?

A. Well, the first week in December.

Mr. Ooms: I might say to your Honor that these are the letters in which Mr. Hobbs represents he had seen Mr. Fidler and he enclosed a draft of a proposed letter to Mr. Fidler proposing a settlement.

If there is no objection, I would like to keep your Honor refreshed as we go along on the things we have read so the story is more intelligible.

Q. What did you do after you received these letters, Defendants' Exhibit 63 and Defendants' Exhibit 64?

A. I believe we went to Mr. Hobbs' office and discussed an agreement with him there and told him, I think it was at that time that we had told him, that there must be some sort of a better settlement we could make than the last agreement.

Q. Are you referring to some agreement he had or these letters or what are you referring to?

A. Why, there was some agreement he had there ready for us. He had an agreement all made out for us there between AMMCO and Mr. Larson and Precision.

638 Q. Go ahead and tell what occurred. Do you know what was in that agreement?

A. I know the sum and substance of it. I don't know exactly what was in it. I know the agreement wasn't anything we could sign and still stay in business.

Q. What was the sum and substance of it?

A. It was something they just wanted the patent Mr. Larson had and wanted us to stop manufacturing wrenches and that would just about put us out of business. I didn't read it over very carefully.

Q. Do you recall when you discussed that with Mr. Hobbs?

A. I don't know the exact date but it was shortly after these letters were received because not so long after that or, perhaps, it was about the same time, Mr. Hobbs refused to act as our attorney any longer.

Q. How many times did you see Mr. Hobbs in this period when he was acting as your attorney?

A. About three times.

Q. Did you always accompany Mr. Larson there?

A. No.

Q. Did he sometimes go alone or did you sometimes go alone?

A. No, Mr. Larson sometimes went alone; I never went there alone.

Q. Do you recall a letter he sent you in which he declined to act further as your attorney?

A. Yes, I do.

Q. I have a letter which is in evidence as Defendants' Exhibit 67, dated December 18, 1940, and ask whether you have seen that before.

(Handing paper to witness.)

A. Yes, I have.

Q. Do you recall receiving that letter?

A. Yes, sir.

Q. What did you do when you received that letter?

A. Went down to see Mr. Alberts.

Q. Tell us what occurred there.

A. Well, we went down to see Mr. Alberts because we had no other place to go, Mr. Hobbs refused to act as our attorney any longer, and we went down to Mr. Alberts to get some advice and Mr. Alberts advised us to go back to see Mr. Hobbs again and, so, we went back to see Mr. Hobbs.

Q. Do you recall when that was with respect to the date of this letter?

A. That must have been somewhere past the middle 640 of the month, oh, I would say somewhere between the 15th and 18th, somewhere like that.

Q. Did you go back to see Mr. Hobbs?

A. Yes, we did.

Q. When?

A. Oh, that was, I believe, the same day or the following day after Mr. Alberts had told us to go back to see Mr. Hobbs.

Q. Tell us what occurred when you saw Mr. Hobbs again.

A. When we talked to Mr. Hobbs this time, why, we told Mr. Hobbs that we didn't think he was going about the thing in the right way to get an equitable settlement and he asked us to suggest something and we told him that we thought Mr. Fidler had something on George B. Thomas to make him sign that affidavit and if he would go after him from that angle, we would probably get somewhere.

And he evidently—

Q. Who said that?

A. Mr. Larson.

Q. To whom?

A. To Mr. Hobbs.

Q. Tell us what else was said there.

A. Well, Mr. Hobbs didn't say much of anything, 641 only he said that might be a good idea, to go after him from that angle, and the following day they came up with the agreement we eventually signed.

Q. When did you sign that agreement?

A. On the 20th, I believe.

Q. What time was it with relation to that earlier meeting you discussed?

A. It was either the following day or the day after.

Q. Did you see Mr. Hobbs on the 20th?

A. Yes.

Q. Where?

A. At his office.

Q. Who was there?

A. Just Mr. Larson, myself and Mr. Hobbs.

Q. Tell us what occurred.

A. Well, we went in there and Mr. Hobbs had this agreement ready and he gave us to understand that if we didn't sign this agreement, why, we were just going to go to jail.

Q. You say he gave you to understand that. What was said?

A. He told us Mr. Wacker, Mr. Lindsey and Mr. Fidler were pretty mad and if we didn't sign this agreement, they were going to unleash the dogs.

642 Q. Did anybody use the word "jail"?

A. Yes, Mr. Hobbs told us that in the first place. Well, that conversation came on before the signing of the agreement. It was before the—oh, maybe ten or fifteen minutes before the signing of the agreement, before Mr. Lindsey and Mr. Wacker and that statement come in.

Q. Where did that take place?

A. At Mr. Hobbs' office.

Q. Was the agreement ever signed?

A. Yes, it was.

Q. When?

A. On the 20th of December.

Q. Was there anything else occurred at that meeting?

A. Yes, Mr. Hobbs said if we signed that agreement, everything would be over with and they would have a big bonfire.

Q. Did anything else occur? Tell us everything fully, what happened and what you did after that.

A. We signed the agreement expecting they would burn up all the testimony we had given and, while the agreement wasn't to our liking, we were made to understand we would either sign the agreement or have to go to jail.

Q. Did you ever see Mr. Hobbs after that?

643 A. No.

Q. What did you do after the agreements were signed?

A. We just took our agreement, that is, our copy of the agreement, and I went on home; Mr. Larson and I both went on home.

Q. Going back, Mr. Carlsen, to a meeting you said you had in Mr. Alberts' office sometime early in November where Mr. Joseph Johnson was present, was there any discussion there of where Mr. Alberts had procured the information that he confronted Mr. Larson with?

A. Yes, he did. He just said he had come from Mr. Fidler's office.

Q. Did he tell you of a meeting there?

A. Yes, he told us he had been to a meeting there and that Mr. Wacker was there and George B. Thomasma.

Q. What else was said of that meeting, if anything?

A. I don't recall anything much more that was said about the meeting there except that they confronted Mr. Larson with evidence that he hadn't been telling the truth.

Q. Did you participate in that discussion at all?

A. No.

Q. Did Mr. Joseph Johnson say anything?

644 A. The only thing I remember him saying was he was pretty mad and he was going to find some way to break the contract with us.

Mr. Ooms: That is all from Mr. Carlsen.

Cross-Examination by Mr. Fidler.

Q. Mr. Carlsen, you testified in Interference No. 77565 as Walter Carlsen, did you not?

A. Yes, sir.

Q. And you also signed the incorporation papers and other papers having to do with Precision Instrument Manufacturing Company as Walter Carlsen?

A. Yes, sir.

Q. And you also signed the agreements that were entered into, or, the agreement that was entered into with Automotive in connection with the Interference as Walter Carlsen?

A. Yes, sir.

Q. And you also signed an agreement, did you not, that was entered into between Precision and Snap-On Tools Corporation as Walter Carlsen?

A. Yes, sir.

645 Q. Now, you have testified as to a conference that you had with Mr. Hobbs at his office on November 28, 1940 as having been—as having talked to Mr. Alberts or having been to Mr. Alberts' office with Mr. Larson in respect to testimony that was given in Interference No. 77565.

I wish you to start at the beginning, as near as you can recollect, and tell me in detail everything that you said or Mr. Larson and Mr. Hobbs said at that first meeting.

A. Well, that would be kind of hard to do.

Q. Let's have your best recollection.

A. Well, when we went to Mr. Hobbs' office and we told him Mr. Alberts had recommended him as an attorney for us, then we went on and told him just exactly what had happened during the taking of the depositions.

Q. What did you tell him now, just exactly what had happened during the talking of the depositions?

A. Well, that I can't recall. I couldn't recall it word for word. I told him I had given some testimony that wasn't the truth.

Q. You had given testimony—

The Court: Just a moment. Are you represented by counsel here, Mr. Witness?

646 The Witness: No sir.

The Court: You understand you don't have to give any testimony that might be used against you in some other prosecution. You understand that?

The Witness: Yes, sir.

The Court: When he asks a question, you don't have to answer. You are under no obligation to answer any question that might incriminate you in any prosecution. Apparently you are not represented by counsel and haven't been advised as to what your constitutional rights are.

Mr. Fidler: Q: I will ask you now, Mr. Carlsen, whether or not Mr. Alberts consulted you with respect to the pleadings filed in this case before they were filed?

A. No.

Q. Did anyone consult you at any time with respect to pleading in this case that Kenneth R. Larsen and certain of his witnesses committed perjury in Interference No. 77565?

A. Yes, I believe Mr. Ooms did. I think Mr. Ooms spoke to me about that one time at his office at a conference.

Q. When was that?

A. Oh, I just can't recall the date. It was along when we had first retained Mr. Ooms as an attorney for us.

647 Q. What were you asked in that respect by Mr. Ooms?

Mr. Ooms: I object to this as not being cross examination on the direct. What he discussed with me wasn't asked about in the direct examination. This man is no longer a party to this suit, no longer an adverse party.

The Court: The bars are pretty well down. I am going to allow questions to be asked about anything except questions that might incriminate this witness and he is going to be advised he don't have to answer such questions.

Mr. Fidler: Will you read the question, please?

(Pending question as above recorded read by the reporter.)

The Witness: A. I don't just remember what it was. I just remember the discussion. I don't remember just exactly what it was or even any part of it.

Mr. Fidler: Q. What was the discussion?

A. It was about this trial to come, this Interference, and so on.

Q. Was there any discussion regarding the testimony you had given in Interference No. 77565?

A. I just don't remember.

Q. Did you give anyone permission to plead in this case or to testify in this case you had committed per-
648 jury in Interference No. 77565?

A. I wasn't in this case; I wouldn't have to give any permission.

Q. Did you hear Mr. Kenneth R. Larson testify in this case?

A. Yes.

Q. Did you hear Mr. Kenneth R. Larson testify to the effect that you gave testimony in Interference No. 77565 which was false and which you knew to be false?

Mr. Goms: I ask the witness be instructed not to answer. He is not here represented by counsel. I represented him when he was first a defendant. I think, if the court please, I may be requested to represent him as a witness. He is not a party to the case and I would like to instruct him not to answer. There is a possibility it may incriminate him.

Mr. Smith: If the court please, I would like to point out for the purpose of aiding you that Mr. Carlsen's deposition was taken in the pretrial matter before we went into this hearing and Mr. Carlsen's deposition shows that he has already testified he gave false testimony in this Interference; he has already testified that in the pretrial deposition.

Mr. Fidler: Your Honor, in the pleadings in this 649 case, there was first an original petition, nothing stated about this matter. In the first amended petition, nothing stated about this matter, and then a second amended petition, in which it was alleged Kenneth R. Larson and certain of his witnesses did testify falsely, or allegedly so, and a third amended petition filed in which the matter was pleaded directly and in that pleading in Paragraph 30 it was stated indirectly in the beginning with respect to Kenneth R. Larson but later in that paragraph that other of the witnesses had testified falsely and, in that connection, in connection with discovery in the pretrial depositions, this witness admitted that he had knowingly given false testimony in the Interference, and I think this matter goes directly to the credibility of this witness in this proceeding.

The Court: Well, I don't see how all of these matters you have been discussing here have anything to do with this question you asked. You asked him—

Read the question, please Mr. Reporter.

(Pending question as above recorded read by reporter.)

The Court: The question, "Did you hear him give that testimony?"

650 I don't see any objection to that question.

Did you hear Mr. Larson testify here the other day?

The witness: Yes.

The Court: That is the answer. He says "Yes."

Mr. Fidler: Q. Was Mr. Larson's testimony so given correct?

The Court: Now, if they want to renew their objection, I will sustain it.

Mr. Ooms: Now, I would like to object that the question might incriminate the witness.

The Court: I will sustain it. Even if this man did testify at this other hearing you tell about, I don't understand you can bring in witnesses and then permit them to incriminate themselves. I don't believe the system of American justice allows you to do that in a situation of that kind. Our Supreme Court has frequently criticized the officers of the government for doing that very thing.

Mr. Lindsey: May I say this, please? This man was an officer of the Precision Corporation. Mr. Ooms and Mr. Freeman announced that all privileges would be waived. They represented this man. They represented the Precision Corporation, one of the defendants. This man has testified. He testified one way in his pretrial deposition which Mr. Ooms has already interrogated the witness on. Now, he is testifying to the contrary at this hearing. When Mr. Ooms went into this deposition, I submit he threw the matter open.

Furthermore, as I understand the matter, if your Honor please, when a witness is on the stand, you have a right to impeach him even if it involves perjury.

They have made these allegations and if we can't establish them through the witnesses who have already admitted perjury, I don't know how we can answer the pleadings.

I always assumed you have a right to attack the veracity of a witness.

The Court: You have.

Mr. Lindsey: And even if he incriminates himself, particularly, when he has already waived the right he has—

The Court: How did he waive it?

Mr. Lindsey: He waived it in the pretrial deposition.

The Court: I asked him and he said under oath he is not represented by counsel and I don't know how he is waiving his rights. I don't know he was represented.

Mr. Ooms: He never was.

Some of the other witnesses were. When I came in here the day of the first adverse deposition and said all privileges were waived, I wasn't representing this

nian. I was representing Precision Instrument and Kenneth R. Larson.

And as far as reading the allegations in the pleadings is concerned, I don't believe the plaintiff has anything to meet except the proof.

Mr. Lindsey: At this time, your Honor, it will make a demand upon the defendants' counsel who prepared the pleadings, and Mr. Freeman who is back of him, to state who are these witnesses of Larson's who you allege perjured themselves in the petition, Snap-On petition, and in Precision and Larson's answer.

I think we should have that allegation cleared up at this time.

Mr. Ooms: I respectfully decline to answer.

Mr. Lindsey: Then I move that the allegations be stricken from the pleadings, if your Honor please.

The Court: Do you intend to make proof on it?

Mr. Ooms: I have made proof that Kenneth R. Larson has. I do not intend to make proof as to any other witness.

The Court: Then, so far as any other allegations are concerned, they may be stricken.

You now allege that there is perjury by Larson.

653 Mr. Fidler: Q. Mr. Carlsen, will you now please state in detail, as far as you can, just what was said at the first conference with Mr. Hobbs at his office on November 28, 1940?

The Witness: A. I believe I have just told you.

Q. I would like you, in order that the record may be clear now, just state what was said, as far as you can recall.

A. Well, we went to his office and told him that Mr. Alberts had recommended him, and that we were kind of in a spot; we would like to have him see if he could not do something about it. And we went on and told him the kind of spot we were in, and he then said that he would get in touch with you and see what he could do about it.

Q. What kind of spot were you in, as you told Mr. Hobbs?

A. That kind of puts me on the spot again, doesn't it?

The Court: If you think it might incriminate you, you can refuse to answer.

Mr. Fidler: Q. Do you so refuse to answer?

The Witness: A. Yes.

Q. Did Mr. Larson tell you at that time, or tell Mr.

Hobbs at that time that he had committed perjury in Interference No. 77565?

654 A. He told Mr. Hobbs that he had made some testimony that was not true.

Q. Now have you told us everything that you can recollect, as to what was said at that meeting of November 28th at Mr. Hobbs' office?

A. Just about everything that I can recollect.

Q. Now, that conference in Mr. Hobbs' office on November 28, 1940, took quite some time, did it not?

A. No; that was not so long.

Q. How long did that conference last?

A. Well, I would say somewhere between fifteen minutes and a half hour.

Q. Then, I believe you testified in your pretrial deposition that it only took about ten minutes?

A. That is possible; I don't remember just how long it took. I know it was a very short conference.

Q. Now, how long did the conference at Mr. Alberts' office take, prior to the time that you went over to Mr. Hobbs' office on November 28th?

A. That was also very short.

Q. Just what happened there; what is your best recollection now as to everything that was said in that conference, at Mr. Alberts' office?

A. Well, Mr. Alberts confronted Mr. Larson with 655 the conversation that he had over in your office; and he wanted to know from Mr. Larson whether it was so or not.

Q. Did Mr. Alberts tell Mr. Larson what the conversation was, that he had had in my office?

A. Yes, he did.

Q. What did he tell him in that respect?

A. The only part of it I recall is the fact that he had a drawing there that some one else was supposed to have made; and Mr. Thomasma evidently proved that he had made it.

Q. Did Mr. Alberts tell Mr. Larson at that time that Mr. Thomasma had made that drawing?

A. Yes, he did.

Q. Was there anything else said to Mr. Larson at that time?

A. Yes, he said we were in a pretty bad spot, and if that

was true he didn't want anything more to do with it, and he better go out and get himself a lawyer.

Q. Did he explain what he meant by saying that you were in a pretty bad spot?

A. Yes, I think he did.

Q. What did he say in that respect?

A. Well, I just don't remember.

656 Q. Who was present at that conference in Mr. Alberts' office?

A. Mr. Johnson, Mr. Alberts, Mr. Larson, and myself.

Q. Did Mr. Johnson do any talking at that conference? — I am talking about the conference November 28th at Mr. Alberts' office, before you went over to Mr. Hobbs' office.

A. Yes; that was the day that Mr. Alberts and Mr. Johnson was at your office?

Q. That is correct.

A. Yes. Well, Mr. Johnson seemed pretty peeved; and the only things I remember him saying was that he was going to find some way to break our contract.

Q. What was Mr. Johnson peeved about, do you know?

A. Well, sort of a breach of contract, I suppose, between Mr. Larson and the Snap-On Tools.

Q. You were familiar with contracts between Precision or Mr. Larson and Snap-On at that time, were you not?

A. Not too familiar; I had seen them, but I had never paid much attention to the contracts.

Q. Did you know at that time what Mr. Johnson meant by the breaking of the contracts?

A. Yes, I had a pretty good idea.

Q. What was it?

657 A. It meant that he would terminate the contract that we had for selling tools to them.

Q. Well, what was the basis for this termination of the contract?

A. I don't know; he didn't say.

Q. Now, during your pretrial deposition, did you testify as to the facts that you have testified here, respecting that I might have something on Mr. Thomasma, and some pressure might be used because of that?

A. In my—

Q. Your pretrial deposition, that you gave in Mr.—

A. Oh, in Mr. Freeman's office?

Q. Yes.

A. No; I do not believe I did.

Q. Why did you not so testify?

A. I just did not recall it at the time.

Q. Well, you recall it now, I believe, in your testimony?

A. Yes.

Q. Well, what refreshed your recollection?

A. Oh, in anything like this, little things come to you from time to time; you remember things that happened.

Q. Do you know whether Mr. Wacker testified in the pretrial deposition after you testified?

658. A. No, I do not.

Q. Now, you have referred to a statement that you say was made by Mr. Hobbs, to the effect, about unleashing the dogs; did Mr. Hobbs tell you who made that statement?

A. No, he didn't say which one of you three made it. He came back and left us with the idea that all three of you made it.

Q. Whom do you mean by all three?

A. You and Mr. Wacker and Mr. Lindsey.

Q. Now, just what did Mr. Hobbs say to you in so telling you that we had said that, about unleashing the dog?

A. He told us that Mr. Wacker and Mr. Lindsey and you were pretty mad; and unless we signed the agreement soon, that you were going to unleash the dogs.

Q. But he never did tell you who, or that any one specifically did say that?

A. No, not any one individual.

Q. Did Mr. Hobbs use the expression that "They said they would unleash the dogs," or anything like that?

A. Yes.

Q. He used the expression "They?"

A. Yes.

Q. Did he explain to you whom he meant by that?

A. No.

659. Q. Where did you get your information as to who it was?

A. Because he mentioned your names, all three of you.

Q. Oh, you deducted then—

A. No, no, I did not deduct; he actually mentioned your names.

Q. In what respect?

A. When he said that you were going to unleash the dogs.

Q. In other words, did he name names specifically, when he said they were going to unleash the dogs?

A. He said Mr. Lindsey, Mr. Wacker and Mr. Fidler were pretty mad; and unless we signed the agreement quickly they were going to unleash the dogs.

Q. Did he explain to you who "They" were?

A. Well, he couldn't say it any plainer than saying Mr. Wacker, Mr. Lindsey and Mr. Fidler.

Q. Now, you have also testified that Mr. Hobbs said that there would be a big bonfire?

A. Yes, sir.

Q. Did Mr. Hobbs tell you who said that?

A. No.

Q. Now, you are absolutely testifying that Mr. Hobbs used the word bonfire?

A. Yes, sir.

Q. Now, just what did Mr. Hobbs say to you in that respect; and I want it in as much detail as you can give it.

A. Well, he said that after we signed the agreement there would be a big bonfire.

Q. Was anything else said?

A. There was something, but I just cannot recall it; there was something said after that, but it did not amount to a lot.

Q. Now, in the negotiations leading up to the contracts that were entered into in the settlement of the Interference, did you at any time ever talk to either Mr. Wacker or Mr. Lindsey or myself?

A. No, sir.

Q. Or any one connected with Automotive Maintenance Machinery Company?

A. No, sir.

Q. All of the talks that you had in that connection were with Mr. Hobbs, is that correct?

A. That is correct.

Q. Did you have any contact with Mr. Alberts in connection with the settlement of the Interference, entering into the agreements in settlement of the Interference?

A. No.

Q. That was handled solely by Mr. Hobbs?

61 A. Well, I was not always there; I only went to Mr. Hobbs' office about three or four times.

Q. You were president of Precision Instrument Company at the time?

A. I was secretary-treasurer.

Q. And you kept yourself informed as to all the business matters that were going on at that time?

A. Not too well informed; I had a little more to do than just—

Q. But you kept informed as to the negotiations that were going on?

A. Oh, yes.

Q. And you have no knowledge of any one doing anything on your behalf in connection with the settlement of Interference No. 77565, other than Mr. Hobbs; is that correct?

A. Not to my knowledge.

Q. Then it is correct, so far as your knowledge goes?

A. Yes.

Q. Mr. Carlsen, I show you a letter dated October 26, 1938, from Snap-On Tools Corporation to Kenneth R. Larson, marked for identification in this case as Automotive Exhibit No. 24; I am handing you a photostatic copy, and I will ask you whether or not you recollect ever seeing the original of that letter.

662 A. Yes, I have.

Q. When did you first see that letter?

A. Sometime in the latter part of November or early part of December; somewhere along in November or December.

Q. Under what circumstances did you first see that letter?

A. When I first started to sell the stock of the Precision Instrument Company.

Q. Was any use made of that letter by you?

A. Yes, I used it to convince the people that I was selling the stock to that we had the orders for tools, and had the Snap-On Tools Corporation as a fellow agent.

Q. In other words, that letter was received some time before the Precision Instrument Manufacturing Company was incorporated, and you used that letter to show to prospective purchasers of stock what was going to happen, in inducing them to purchase stock; is that correct?

A. That is right.

Mr. Fidler: Your Honor, I wish to offer at this time the

letter just referred to by the witness, as Automotive Exhibit No. 4.

The Court: Any objection?

Mr. Ooms: No objection.

The Court: It may be admitted.

663. (Said document, so offered and received in evidence, was marked PLAINTIFF AUTOMOTIVE EXHIBIT NO. 4.)

Mr. Fidler: Q. Did you know Mr. Thomasma at the time you were taking this letter, Automotive Exhibit 4, around?

A. Yes, I did.

Q. Trying to sell stock?

A. Yes, I did.

Q. And how long had you known Mr. Thomasma?

A. Well, I met him when the letter first came into my possession; that is, a few days before then.

Q. That is somewhere around in October, 1938?

A. No, it was later than that; either November or December.

Q. And did you know at that time that Mr. Thomasma was an employee of Automotive Maintenance Machinery Co., plaintiff in this case?

A. Not when I first met him, no.

Q. When did you first learn that fact?

A. Oh, after I had been acquainted with him about two weeks.

Q. And while you were still selling stock or trying to sell stock, and before the incorporation of Precision?

A. Yes, sir.

664. Q. Now, do I understand it to be the fact that you tried to keep Mr. Thomasma from testifying in Interference No. 77565?

A. Yes, sir.

Q. Why did you do that?

A. Because the agreement with the Snap-On Tools Corporation, I think, did not allow any one from AMMCO or any of its competitors to have any connection with our company.

Q. In other words, you knew at the time that the Interference was going on that there was such an arrangement between Snap-On and Mr. Larsen, or Precision; is that correct?

A. That is right.

Q. And that you wanted to prevent Mr. Thomasma from testifying in Interference No. 77565, because that would bring him out into the open, and it would impair your relationship with Snap-On Tools Corporation; is that correct?

A. That is right.

Q. Now just what did you do in trying to keep Mr. Thomasma from testifying?

A. Nothing; just asked him not to.

Q. How many times did you ask him not to?

A. Once.

665 Q. And when was that?

A. Oh, quite some time before the depositions were taken.

Q. And just what did you say to Mr. Thomasma at that time?

A. I told him I didn't feel it was good for the company that he was to come out in the open. If he were to testify, why, it would probably ruin our relationship with Snap-On.

Q. When did you first learn, if ever, that Automotive Maintenance Machinery Company, plaintiff in this case, was a supplier of wrenches, Torque wrenches to Snap-On Tools Corporation, defendants in this case?

A. Some time in December, 1938.

Q. That was prior to the time that Precision Instrument Manufacturing Company was formed?

A. Yes, about at that time; yes.

Q. And under what circumstances did you learn that fact?

A. Oh, just by chatting amongst one another.

Q. Well, who was the one another?

A. Mr. Larson, Mr. Thomasma, and I.

Q. And no one else?

A. No.

Q. Did you ever talk to any one connected with 666 Snap-On?

A. Well, not at that time; no.

Q. Now, at the time that you were selling stock, or trying to sell stock for Precision, and were using this letter, Automotive Exhibit 4; you knew that Precision was going to take away from Automotive its business with Snap-On, did you not?

A. No.

Q. You did not know that?

A. Not at that time; no.

Q. Well, when did you learn that fact?

A. About the time the company was incorporated.

Q. And that was about in December?

A. That was the latter part of December.

Q. 1938?

A. Yes.

Q. And where did you get that information?

A. From Mr. Larson.

Q. No one else?

A. Not that I remember.

Q. Now, as I understand it, Mr. Thomasma did do some work for Precision; is that correct?

A. Oh, yes.

Q. And just what work was that?

A. Oh, he helped us build some punches when we started out; he done a little grinding in there several evenings.

Q. And at that time you knew that Mr. Thomasma was an employee of Automotive Maintenance Machinery Company?

A. Yes.

Q. And how long did Mr. Thomasma continue that work with Precision?

A. Oh, not over a week or two, or possibly three weeks; I don't just recall. It was not very long.

Q. Well, why was it that Mr. Thomasma didn't continue longer with Precision?

A. That I don't know.

Q. You have no idea?

A. No; only that we just didn't want him around there; we didn't think it was good for the company for him to be around there, because some of the Snap-On men may come down there and recognize him.

Q. Who told you that some of the Snap-On men might come down and recognize Mr. Thomasma?

A. George did.

Q. When did he tell you that?

A. Well, because he had the interests of the company at heart at that time too.

Q. When you say George did, you mean George Thomasma?

A. Yes.

668 Q. You knew that Mr. Thomasina had been up to Snap-On Tools Corporation at other times, or had at sometime?

A. At sometime or another.

Q. And that he knew some one at Snap-On Tools Corporation.

A. Well, that I didn't know, that he knew some one there. He had been there to repair some wrenches, or at least he said he was.

Q. And for that reason, in view of the contractual relationship with Snap-On, you had to keep him out of the picture, then?

A. That is right.

Mr. Fidler: That is all the cross-examination.

The Court: Is there any redirect examination?

Mr. Freeman: No redirect, your Honor.

The Court: All right; you are excused.

(Witness excused.)

Mr. Freeman: Mr. Johnson, will you please take the stand?

669 JOSEPH JOHNSON, called as a witness by defendants, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Freeman.

Q. Mr. Johnson, will you please state your full name?

A. Joseph Johnson.

Q. And your residence?

A. 4203 Taft Road, Kenosha, Wisconsin.

Q. And you are at present president of Snap-On Tools Corporation, one of the defendants in this cause?

A. I am, sir.

Q. And how long have you been president of that company?

A. Since the spring of 1939.

Q. And who was your predecessor, or who was president prior to the spring of 1939?

A. Mr. E. W. Myers.

Q. Now tell us generally what your duties are with Snap-On Tools Corporation, as its president,—just briefly.

A. General administrative officer.

Q. And you have junior executives that do the work, so to speak?

A. We do; yes, sir.

670 Q. And what is the general business of Snap-On Tools Corporation?

A. We are a tool manufacturing concern.

Q. And how long have you been connected with that company?

A. Since the inception of the company, in 1920.

Q. And all during the period of the last twenty-three years Snap-On Tools Corporation has been a manufacturer of tools?

A. We have; yes, sir.

Q. And who has represented you, patentwise; that is, when I say you, I mean your corporation.

A. Mr. Harry C. Alberts.

Q. And has that been for more than the ten years last past?

A. It has.

Q. And you are acquainted with Kenneth R. Larsen?

A. I am.

Q. Do you recall when you first met Mr. Larson?

A. In 1938.

Q. And do you recall in what connection?

A. He came into the office with a tension measuring wrench.

Q. And was any one else present at the time he 671 came in; that is, besides yourself?

A. I do not recall whether I met him the first time that he came in there; I met him through Mr. Myers and Mr. Allen Howes, of our sales department.

Q. Mr. Myers was president at that time?

A. He was president at that time.

Q. And Mr.—

A. Allen G. Howes.

Q. And what was he?

A. Of our sales department.

Q. Do you recall any conversation that you had with Mr. Alberts shortly after November 20, 1940, in connection with an Interference proceeding involving Larson and Zimmerman, or the Automotive?

A. Yes, I do.

Q. Will you just go ahead and tell us what was said

to you about Mr. Alberts, by Mr. Alberts, what information he gave you; just tell it in your own words, briefly.

A. Well, word came to me from Mr. Alberts that Mr. Fidler's office had been in touch with him, and that he had seen Mr. Fidler; and that at that meeting Mr. Alberts had been told that they had information to the effect that

Larson had given false testimony in the Interference 672 proceedings.

Q. And did you know prior to that telephone call from Mr. Alberts that there was an Interference going on in the Patent Office, between Zimmerman in behalf of Automotive and Larson on behalf of Precision?

A. Yes, I knew that was going on.

Q. And who informed you of that?

A. Mr. Daniel.

Q. And who is Mr. Daniel?

A. Mr. Daniel is assistant secretary; and he has been handling the legal work for quite a few years. He heads up our new tools committee.

Q. Mr. Daniel is an employee of Snap-On, the defendant here?

A. Yes, sir.

Q. What did Mr. Alberts ask you to do after he called you, shortly after November 20, 1940?

A. The purpose of the call was to arrange for a meeting at which I would be present to hear the testimony.

Q. And when you say to hear the testimony, just what are you referring to?

A. Well, I am referring now to the information that came to him with respect to the false testimony that had been given in the Interference proceedings.

673 Q. And did he tell you where you were to go to hear this testimony?

A. I believe so; although I was to meet him at his office.

Q. And when did you meet him at his office, in order to hear this so-called testimony?

A. It was on November 28th.

Q. Of 1940?

A. Of 1940, yes.

Q. And you met Mr. Alberts on November 28, 1940; then what did you and Mr. Alberts do?

A. Well, we went from his office over to the office of Mr. Fidler.

Q. And tell us now, when you entered the office of Mr. Fidler, or rather, the offices of Davis, Lindqvist, Smith & Shonts, what happened; just trace your progress through that office, into Mr. Fidler's office; and tell us what happened there.

A. Well, we entered the reception room, and Mr. Alberts made our presence known. We waited for a short time, and then were ushered into Mr. Fidler's office. Then in Mr. Fidler's office there was present at that time Mr. Fidler, Mr. Wacker, Mr. Allen, Mr. Alberts, and myself.

Q. And after you went into Mr. Fidler's office, what 674 was said?

A. Mr. Alberts introduced me; it was the first time that I had met Mr. Fidler; and he made the statement at that time that we were there solely in behalf of Snap-On Tools Corporation. To which Mr. Fidler replied that so far as he was concerned Snap-On was Precision, and Precision was Snap-On.

Q. Then what took place, after Mr. Fidler told you, or rather told Mr. Alberts Snap-On was Precision and Precision was Snap-On; what took place next?

A. Of course, that was a matter for the attorneys; they sparred for quite some time. And I don't know that I concerned myself too much with it, because I do not recall definitely everything that was said. But I do know that later on a Mr. Thomasma was called into the office.

Q. And were you told the purpose of having Mr. Thomasma come into the office?

A. Well, I already understood the purpose, because Mr. Alberts, when he originally called me, told me that Fidler's office had information that the testimony given by Mr. Larson had been false.

Q. And when Mr. Thomasma came into the office, what took place then?

A. Well, we were told that he was George B. 675 Thomasma; and he was questioned. And there were several things brought out there that came to me for the first time; the first being that Mr. Thomasma said on questioning that he had invented the wrench, or was the party that had made the drawing for the tool that Larson had claimed was drawn by a high school boy. Furthermore, I learned that Thomasma was an ex-employee of AMMCO, and that he was also associated with the Precision Instrument Manufacturing Company.

Q. And who questioned Mr. Thomasma at the time you obtained the information that you have just given in your preceding answer?

A. Mr. Fidler asked a number of questions.

Q. And about how long did that examination or questioning of Mr. Thomasma take place?

A. Oh, it is difficult to recall; those are principally things that I was interested in. At least, they gave me information I had never had before.

Q. And about how long were you at Mr. Fidler's office; that is, the whole conference?

A. Oh, I would judge we were there probably an hour and a half or two hours.

Q. And was that in the morning or afternoon?

A. In the morning.

676 Q. And did Mr. Alberts examine or ask Mr. Thomasma any questions, after Mr. Fidler had concluded his questioning of Thomasma?

A. There was one thing that he did ask him, that I recall; and that was whether or not Mr. Thomasma had ever met Mr. Alberts or myself.

Q. And what was Thomasma's answer?

A. No.

Q. Did Mr. Fidler say anything about Snap On at that particular time, at that meeting?

A. Well, there was one reference made that I took exception to; and that was that he said that Snap-On's hands were not entirely clean in the matter.

Q. And what did you say?

A. And I took exception to it; I told him that we were there with clean hands, and that we had always dealt on a very high plane.

Q. Did you tell him anything as to how you expected to conduct your business at that time?

A. Well, we have always conducted it on that basis, and intend to continue to conduct it on that basis.

Q. Now, after Mr. Alberts had questioned Mr. Thomasma, and after Mr. Fidler had questioned Mr. Thomasma, what did Mr. Alberts say, if anything?

677 A. Oh, I don't recall. It was rather shocking to hear that we had been connected with somebody that had formerly been with one of the supplier accounts.

Q. Did Mr. Alberts say anything about what he was going to do in connection with the Interference?

A. Oh, yes; he did state to Mr. Fidler that in view of the information that we had learned, that we would immediately get in touch with Mr. Larson; and that if the facts were substantiated by Mr. Larson, that he would grant a concession of priority, or whatever it happened to be, in the Interference proceedings; and also that he would withdraw as attorney for Larson.

Q. And then what happened; did you stay at the conference, or did you leave?

A. Well, we left shortly after that.

Q. Did Mr. Fidler make any statement to you or Mr. Alberts, or to both of you, as you were leaving?

A. Yes, he did. He didn't feel that a concession of priority would satisfy Mr. Wacker; that Mr. Wacker had spent considerable money on tension wrench patents, and that unless a satisfactory adjustment was made with him, that he would unleash the dogs.

Q. Mr. Fidler told you that?

678 A. Yes, sir; he made that statement to Mr. Alberts and myself. He also said that they had discussed the matter with the United States patent officials, and that it was even a matter for the United States District Attorney.

Q. And you and Mr. Alberts then left Mr. Fidler's office?

A. We did, sir.

Q. And where did you go?

A. We went to Mr. Alberts' office.

Q. What took place there?

A. Mr. Alberts immediately called Mr. Larson and told him to get down to his office as quickly as he could, and to bring with him Mr. Carlsen. And there apparently was a little fiddling on the phone; and he said the matter was very urgent and important, and they both had to be there and be there quick.

Q. And did Mr. Larson and Mr. Carlsen come down to Mr. Alberts' office that day?

A. They did.

Q. Was that in the morning or afternoon?

A. That was in the afternoon.

Q. And tell us now what took place at Mr. Alberts' office?

A. At that time, when they came in Mr. Alberts advised them of the meeting he had in Mr. Fidler's office;

and that Mr. Thomasma was there, and that Thomasma
679 had very definitely stated that he had made the drawing, or the date of the drawing was correctly shown; that he had been a former employee of AMMCO, and that he was also connected with the Precision Instrument Company.

Q. And who all was at this conference in Mr. Alberts' office?

A. Mr. Larson, Mr. Carlsen, Mr. Alberts, and myself.

Q. And what did Mr. Alberts say to Mr. Larson, over and above the fact that he had been at Mr. Fidler's office, and talked to Mr. Thomasma?

A. Well, he told him that it was a very serious matter. —I am getting a little bit ahead of myself.

Q. Just tell the story as you recall it, Mr. Johnson.

A. When he was confronted with the information obtained in Mr. Fidler's office, he did finally say that Thomasma was connected with him; that he knew that he had been connected with the AMMCO organization. But with respect to the drawing, he delayed there; he wouldn't say yes and he wouldn't say no. And Mr. Alberts told him it was a very serious matter, and that he better get himself another attorney, and get another attorney quick.

Q. Did Mr. Larson finally admit that the drawing was made by Mr. Thomasma, and not by a high school boy?

680 A. Well, later—

Q. He told that to you that afternoon?

A. Yes, sir.

Q. November 28, 1940, in Mr. Albert's office?

A. That is correct.

Q. And what happened after that?

A. Well, I returned to the plant and discussed this with my associates; arranged for a meeting there to have Mr. Alberts present. That was several days later. And we had Mr. Alberts outline the entire situation, from beginning to end.

Q. Did Mr. Alberts tell Mr. Larson at this meeting of November 28th that he would continue to represent him?

A. No; he said he would no longer represent him.

Q. What else did he tell him?

A. Well, he told him to get another lawyer.

Q. Do you recall a remark that Mr. Alberts made in connection with this suggestion that Larson get himself another lawyer?

A. Yes, he said that the matter was a rather serious one; and that if the information that we had got in Mr. Fidler's office was substantiated, that he would have to get himself another attorney.

Q. Now coming back to the time when you asked 681 Mr. Alberts to come up to Kenosha, as you have just testified, what was the purpose of having Mr. Alberts come up to Kenosha, after November 28, 1940?

A. Well, I wanted my associates to hear from the man who had been living with this case from start to finish, to outline what had transpired.

Q. And how soon after November 28th was it that Mr. Alberts came up to Kenosha?

A. It was within several days.

Q. And were you present when Mr. Alberts told the story?

A. I was, sir.

Q. And about how many other of the executives of your company were present?—When I say executives, I mean people in your employ, not necessarily executives.

A. As I recall, we had our purchasing agent there; we also had a representative from the engineering department; we had Mr. Daniel, who was chairman of the new tools committee; and Mr. Palmer was present; Mr. Seidemann; I believe Mr. Nemitz sat in that meeting; and myself.

682 Q. What was your reaction to the situation after you were acquainted with the facts?

Mr. Lindsey: I object, your Honor, to what this man's reaction was.

The Court: Objection sustained.

Mr. Freeman: Q. What did you do after Mr. Alberts made the explanation to the executives at your plant within a few days after November 28th, 1940? What was the next thing that happened?

A. Well, we continued the—oh, at that time I discussed with Mr. Daniel and had previously discussed with him need in our line for a tension tool, and mentioned to him that he would have to get busy either through our development source or through outside source to see whether or not they could line up a tool of that kind.

Mr. Freeman: Might I get Mr. Lindsey's letter of December 19, 1940, to Mr. Alberts?

Mr. Lindsey: I guess you have that, haven't you, Mr. Freeman?

Mr. Hibben: Do you want the original?

Mr. Freeman: If you have it.

Mr. Hibben: We have our own file copy, if that is what you want, Mr. Freeman.

Mr. Freeman: Q. I hand you a carbon copy which 683 is an original letter from Harry W. Lindsey, Jr., taken from Snap-On's files and will ask you to state whether or not you have seen that copy prior to today.

A. Yes, I have.

Q. And when did that letter come to your attention?

A. Sometime late in December.

Q. And who presented it to you?

A. Mr. Daniel.

Q. I notice that Mr. Lindsey asked Mr. Alberts to send a copy of the letter to you. Can you explain how the letter got into the hands of Mr. Daniel at Snap-On's plant?

A. Mr. Daniel has been handling patent matters at our plant for many years.

Q. And were you in Kenosha shortly prior to your signing of the agreement which is dated December 20, 1940 which you signed on December 23, 1940? Were you out of town?

A. I was out of town, yes.

Mr. Freeman: We offer as Defendants' Exhibit No. 68 the letter of Davis, Lindsey, Smith and Shonts to Harry C. Alberts, with a copy to Mr. Johnson of Snap-On Tools Corporation, which Mr. Lindsey requested Mr. Alberts to send to Mr. Johnson of Snap-On.

Mr. Fidler: No objection.

Mr. Lindsey: No objection.

684 The Court: It may be received.

Mr. Freeman: I would like to read the letter.

(Defendants' Exhibit No. 68 was thereupon read to the Court by Mr. Freeman.)

(Said document, so offered and received in evidence, was marked DEFENDANTS' EXHIBIT NO. 68.)

Mr. Freeman: Q. Did you have Mr. Lindsey's letter of December 19, 1940 before you when you signed the Snap-On Automotive Agreement?

A. Of that I am not certain.

Q. Had you been informed of that letter?

A. I don't recall.

Q. I hand you a letter dated December 19, by Harry C. Alberts to Snap-On Tools Corporation and ask you to

look at it and tell us whether or not you had that letter before you at the time you signed the agreement with Automotive on December 23, 1940.

Mr. Lindsey: Have we seen that letter?

Mr. Freeman: Oh, yes. It is your exhibit, Automotive's Exhibit No. 10. It is a letter taken from the files of Snap-On which we furnished you with.

The Witness: I am not certain that I did.

Mr. Freeman: Q. Did you talk to any one in your plant with respect to that letter?

A. Yes. I have at some time talked with someone 685 about it.

Q. And with whom?

A. Mr. Daniel.

Mr. Freeman: I might, for the convenience of the Court, read Mr. Alberts' letter, Automotive Exhibit 10, which was a letter sent by Mr. Alberts to Snap-On, of December 19th, 1940.

(Automotive Exhibit No. 10 was thereupon read to the Court by Mr. Freeman.)

Mr. Freeman: You may cross examine.

Mr. Smith: If your Honor please, we would appreciate a few minutes recess at this time.

Before doing that, I would like to make this statement to your Honor: Mr. Goodwill, the Court Reporter who took all the depositions, was handed the two note books which I mentioned in my opening statement, for safe-keeping. He has requested that someone take charge of them here in the court room because he is not here at all times, and in case they were demanded in his absence he would be unable to produce them. I ask that we state in the record that he is delivering them to someone in the Court room.

The Court: What can you do with them in his absence?

Mr. Smith: Do you have any objection to my holding 686 them until such time—

Mr. Ooms: No objection.

The Court: What can you do with the note books? You can't read his notes?

Mr. Smith: These are the note books of the original Interference which were the two so-called—

The Court: But they are of stenographic characters?

Mr. Smith: These are the books that the former Court Reporter produced from the old Interference.

The Court: You are taking possession of them, and every one has seen you take them, and you will be responsible for them.

(Mr. Goodwill handed to Mr. Smith two note books of Thomas L. Rafferty, Court Reporter, marked Automotive Exhibits 14 and 15 for identification.)

Cross-Examination by Mr. Fidler.

Q. Mr. Johnson, you have referred to a Mr. Allen G. Howes.

A. I have, sir.

Q. And is he connected with your company?

A. He is.

687 Q. And in what capacity?

A. He is manager of our Cleveland, Ohio Branch.

Q. And where is he located at this time?

A. Cleveland, Ohio.

Q. You have referred to a conference which you learned something about in my office, at which time Mr. Alberts and I alone discussed the matter of testimony in Interference No. 77565. Is that correct, you have knowledge of that conference?

A. He called me after the conference was held.

Q. And how long after the conference was held?

A. I would say it was the same day.

Q. And in calling you what did Mr. Alberts say?

A. He said that you had in your possession information which proved that Larson's testimony was false.

Q. Anything else he said?

A. That was about the sum and substance of it.

Q. And what did you say to Mr. Alberts?

A. Well, just a minute here. He said also that he would like to have for me to hear the information, and I believe it was also your recommendation, and a meeting was arranged for.

Q. And what did you say to Mr. Alberts?

688 A. Well, at that time, as I recall it, I told him that I would be out of the city, but that I would like to meet with you, and I believe a meeting was arranged.

Q. Is that all that you said?

A. Also at that time I didn't want either Kenneth R. Larson or Carlsen to know about this meeting because I wanted to get my own information and get it straight.

Q. What information did you want to get?

A. Regarding the false testimony that Larson was supposed to have given.

Q. And how did you want to get that?

A. I was going to get it in your office in a meeting.

Q. And after that telephone conversation with Mr. Alberts when did you next see Mr. Alberts?

A. I saw Mr. Alberts on the 28th of November.

Q. And I believe Thanksgiving Day came in there somewhere. Do you remember that?

A. I think it was the week earlier.

Q. I am speaking with respect to the telephone conversation that you had with Mr. Alberts respecting the conference that he had with me when you were not present.

A. It was a week prior to the meeting we held in your office.

Q. When was that with respect to Thanksgiving Day?

A. I think it was before Thanksgiving Day.

689 Q. Where were you on Thanksgiving Day in 1940?

A. I was at home.

Q. And when did you go on that trip that you have just referred to, when did you leave?

A. Shortly after Thanksgiving, I believe.

Q. How many days, or how long after Thanksgiving?

A. Probably the day after.

Q. Do you recollect?

A. Not definitely. No.

Q. Where did you go on that trip?

A. I went to Windsor, Canada.

Q. And how long were you in Windsor, Canada?

A. A little less than a week.

Q. How long did it take you to get there?

A. That is an over-night trip.

Q. Each way it took an over-night train ride?

A. Yes.

Q. Did you come through Chicago that trip?

A. I do, sir.

Q. On your way to Canada, what time did you get into Chicago?

A. I came in on a night train.

Q. Do you recollect when that train got in?

A. I don't recall, no.

690 Q. Did you see Mr. Alberts on your way through, going to Canada?

A. I don't believe so.

Q. Don't you recollect?

A. I don't recollect definitely. No.

Q. Do you recollect whether or not any report was made in written form by Mr. Alberts respecting the conference that he had with me when you were not present?

A. Yes, I have seen those reports.

Q. When did you first see those reports?

A. I don't recall.

Q. Well, was it sometime prior to the time that you entered into the agreements in settlement of the Interference?

A. I believe so, yes.

Q. Don't you know what the fact is?

A. I don't know, because Mr. Daniel has been handling the patent matters and we don't confer every day.

Q. It couldn't possibly have been recently, in connection with this case, that you saw them?

A. No, sir.

Q. Now I hand you a document here which purports to be a report and which is marked Automotive Exhibit 12 for identification, and I ask you to examine the same 691 and state whether or not you ever saw that, and I may say I am handing you a photostatic copy.

A. I think I did, sir.

Q. And is this the report that you were just referring to that you had seen but you did not recollect just the time you had seen it?

A. That is one of them. There are numerous reports that are made to us by him.

Q. Numerous reports respecting the conference Mr. Alberts had with me when you were not present?

A. No, with respect to matters handled for the corporation.

Q. How many reports were made by Mr. Alberts with respect to a conference that he had with me in connection with Interference No. 77565, at which time you were not present?

A. There may have been several.

Q. How many were you informed of?

A. I believe there were several that I was informed of.

Q. With respect to any conferences that I had with Mr. Alberts prior to Thanksgiving 1940, at which time you were not present, I am talking about any conference with respect

to Interference No. 78565, how many such conferences were you informed of?

A. I was informed of one, that I know of.

Q. And how many reports were made with respect 692 to that conference?

Mr. Freeman: When you use the word "reports" are you referring to what you have in your hand as a report, or might it be a letter report?

Mr. Fidler: I am referring to Automotive Exhibit No. 12, which I have referred to as a report.

Mr. Freeman: As distinguished from a letter?

Mr. Fidler: Yes.

Mr. Freeman: Or any telephone report?

Mr. Fidler: Yes.

Q. How many reports were made with respect to that conference? I am referring to a written report such as the one I showed you a moment ago.

A. There was one that I know of, yes.

Q. And this one, Automotive Exhibit 12, for identification, is the report that you have just referred to?

A. I think it is.

Q. I ask you to read the last paragraph of this report and to state whether or not the statements made therein are correct.

A. I am now reading paragraph 12:

"I recommend a conference be arranged between Fidler, Wacker of AMCO, Thomasma and Johnson of Snap-On, and myself. I called Snap-On at 4:30 p.m. and talked 693 to Daniel, also Johnson. Johnson tentatively set the conference for Thursday, November 28th, 1940 at ten a.m. at my office, in that he would be in the east and return to Chicago on that day. Mr. Johnson suggested that this matter be withheld from Larson until this conference had taken place, and thereafter would be submitted to Larson and Carlsen."

Q. Will you explain why you suggested that this matter be withheld from Larson until this conference had taken place and thereafter it would be submitted to Larson and Carlsen?

Mr. Freeman: He has already answered that once, that he wanted to get the information straight.

Mr. Fidler: He has not yet been shown this particular document, Mr. Freeman and your Honor.

The Court: You may answer.

Mr. Fidler: And I think the record should be clear.

The Witness: Will you read that question, please?

(The last question was read by the Reporter.)

The Witness: Because I wanted to hear the information and get it straight from you as you would present it.

Mr. Fidler: Q. What information?

A. The information that you had conveyed to me through Mr. Alberts, that you were in possession of 694 evidence that the testimony given by Larson at the Interference Hearing was false.

Q. Did I convey any information to you through Mr. Alberts?

A. When Mr. Alberts reported to me regarding the meeting that was held in your office that day, I am quite sure that was the subject of the entire conference.

Q. And that was a matter between you and Mr. Alberts. I had nothing to do with that.

A. Except that he reported to me the conference that had been held with you.

Q. Is that all the reasons that you had as to why you were holding this matter from Mr. Larson and Mr. Carlson?

A. I would say that was sufficient reason.

Q. Did you have any reason to fear that they might do something that would impair your contractual obligations with them?

A. No, other than that if false testimony had been given, I wanted to have something definite before I confronted them.

Q. And what did you want them confronted for?

A. Well, we were dealing with them in all good faith, and if there was anything in the wind that you had indicated, I certainly wanted to know it, so that I could in turn check with them.

695 Q. For what purpose?

A. Because we certainly would not continue to do business with any one that had operated as they had.

Q. Isn't it a fact that you had a contract or an understanding with them with respect to their activities and employment of certain parties?

A. That is correct.

Q. And what was the reason for that arrangement?

A. Because we wanted to deal on a high plane and cer-

tainly did not want a product that could have come out of another plant.

Q. Well, why were you so concerned about not having any one connected with any other company associated with Precision? What did that have to do with your high plane?

A. Well, because we certainly wouldn't want to deal on any tool that had been taken out of some other plant.

Q. At that time that you had dealt with these people, that is, Precision, you were dealing with Automotive, were you not?

A. We were. Yes.

Q. And why did you want to take any precautions with respect to Automotive?

A. Because throughout the years the sort of connections that we have had in our business have been last 696 ing ones, and if there had been any connection between this new Precision Company and AMMCO most certainly we would not want to have had any relations with them.

Q. Well, if you were on good terms with Automotive, was there any reason to suspect that any one of Automotive was connected with Precision?

A. I don't know that there was, no.

Q. Is there any better reason that you can give as to why you did not want Precision to have any one connected with Automotive associated with them?

A. Well, as I have told you, we have always done business on a very high plane and we didn't want to be the distributor for a line that would become involved in litigation.

Q. What position did you hold with Snap-On in 1938?

A. I was vice-president and treasurer.

697 Mr. Lindsey: I think we may very materially shorten the cross examination of Mr. Johnson. He is president of one of the parties to this litigation and, in order to shorten the cross examination I will offer at this time his deposition which was taken under the discovery rule, together with three exhibits, the first being a letter from Mr. Daniel of Snap-On and Mr. Harry C. Alberts as Automotive's Exhibit No. 7.

Next, a letter from Mr. Alberts to Snap-On, attention of Mr. Johnson, dated December 19, 1940, as Automotive Exhibit No. 10.

And a letter from Mr. Alberts to Snap-On, attention of

Mr. Johnson, dated October 18, 1938, as Automotive's Exhibit No. 8.

These were all marked for identification during the course of the deposition.

The Court: Any objection?

Mr. Freeman: None whatever.

The Court: All right, they may be received.

698 Mr. Freeman: Did you give the deposition an exhibit number?

Mr. Lindsey: We will fill that in. The reporter is bringing it over and he will be here soon.

(Said documents, so offered and received in evidence, were marked, respectively, AUTOMOTIVE'S EXHIBITS Nos. 7, 10, 8 and 17.)

The Court: All right. Does that conclude?

Mr. Fidler: I have a few questions.

Cross-Examination by Mr. Fidler. (Continued).

Q. Mr. Johnson, at that meeting in my office on November 28, 1940, the persons present were Mr. Frederick G. Wacker, Mr. Victor Allen, yourself, Mr. Alberts, Harry C. Alberts, and me throughout that conference, is that correct?

A. Did you mention the name of Mr. Thomasma?

Q. Not yet but the parties I have mentioned, they 699 were present at all times during that conference?

A. They were.

Q. During part of that conference, Mr. Thomasma was present?

A. He was.

Q. Now, after the conference concluded, you and Mr. Alberts left first, I believe?

A. No, Mr. Thomasma left the office first.

Q. And then you and Mr. Alberts left?

A. We did, yes.

Q. Now, as I understand your testimony, I was the only one present at that meeting who said anything about unleashing the dogs or about referring the matter to the District Attorney or about referring the matter to the Patent Office, is that correct?

A. You were, sir.

Q. Mr. Wacker said nothing along those lines or Mr. Allen?

A. No, sir.

Q. Is that correct, they did not?

A. They did not.

Q. Now, all contacts between the parties on your behalf in connection with the negotiations leading up to the settlement of the interference were made by Mr. Harry 700 C. Alberts, is that correct?

A. It is.

Q. Now, you did not talk to me or to Mr. Wacker or anyone associated with Automotive about that, is that correct?

A. That is correct.

Q. Nor did you ever talk to Mr. Hobbs about that?

A. I have never met the gentleman.

Q. Did you ever tell anyone connected with Automotive, including its attorneys, that Larson had admitted to you that he had committed perjury in testifying in the Interference?

A. No, sir.

Q. Did you ever tell any such thing as that to Mr. Hobbs?

A. I have never met him.

Q. So far as you know, did anyone connected with Snap-On ever tell either Mr. Hobbs or Automotive, including its attorneys, that Larson had admitted perjury to you and to Mr. Alberts?

A. I cannot speak for the others, Mr. Fidler.

Q. Well, you have no knowledge of anyone?

A. I have no knowledge of anyone.

Q. At this time do you have any dealings with Precision Instrument Manufacturing Company?

701 A. We do.

Q. And when did those dealings start?

A. In 1941.

Q. What time in 1941?

A. I believe they began shipping the new wrench in the fall of 1941.

Q. Well, those dealings involve the manufacture and sale of torque wrenches, is that correct?

A. The sale on our part.

Q. And the manufacture by Precision of wrenches for you?

A. That is correct.

Q. Now, I hand you three agreements, one which is

dated December 20, 1940 between Snap-On Tools Corporation and Kenneth R. Larson and Precision Instrument Manufacturing Company, and another between the same parties and dated January 16, 1941, and another dated March 26, 1942, between the same parties, and ask you whether or not those are agreements between Snap-On Tools Corporation and the parties I referred to, and I have handed you photostatic copies which are copies, I understand, of the original agreements (handing documents to witness).

A. This carries my signature.

702. Mr. Fidler: Please read the question.

(Pending question as above recorded read by the reporter.)

Mr. Freeman: If those agreements show they are made by Snap-On and Precision, why, we will agree right now they are O. K.

Mr. Fidler: Q. Is that your signature that appears at the end of each of those agreements?

A. It is.

Mr. Fidler: I wish to offer at this time in evidence the three agreements identified as follows:

The agreement of December 20, 1940 as Automotive's Exhibit No. 3.

The agreement of January 16, 1941 as Automotive's Exhibit No. 18.

And the agreement of March 26, 1941 as Automotive's Exhibit No. 19.

The Court: I understand when there is no objection, they are admitted.

Mr. Freeman: No, we concede the agreements.

The Court: All right.

703. (Said documents, so offered and received in evidence, were marked, respectively, AUTOMOTIVE'S EXHIBITS No. 3, No. 18 and No. 19.)

Mr. Fidler: I may say, your Honor, that the deposition by Mr. Johnson will be Automotive's Exhibit No. 17.

The Court: Have you finished now?

Mr. Fidler: That is all my cross examination.

The Court: Any redirect examination?

Mr. Freeman: Just one question.

Redirect Examination by Mr. Freeman.

Q. Mr. Johnson, why did you enter into business relationship with Larson and Precision in January or any part of 1941? That is, why did you again enter into business relationship with Precision and Larson?

A. I believe that question could probably best be answered by Mr. Daniel, who carried the negotiations and arrangements through with Larson.

Q. You signed the agreements, did you not?

A. I did, sir.

704 Q. Upon whose instructions or advice did you sign the agreements?

A. Mr. Daniel.

Q. Just what office has Mr. Daniel with your company?

A. He is assistant secretary.

Q. With respect to his duties, aside from his corporate setup, what does he do?

A. He also handles the new tools committee and new tools development and new tools brought into the line.

Mr. Freeman: That is all.

Mr. Fidler: Nothing further.

(Witness excused.)

Mr. Freeman: Mr. Alberts, please take the stand.

705 HARRY C. ALBERTS, called as a witness on behalf of the defendants herein, being first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Freeman.

Q. Will you please state your full name?

A. Harry C. Alberts.

Q. Your residence?

A. 435 Oakdale Avenue, Glencoe.

Q. What is your profession?

A. Patent lawyer.

Q. How long have you represented Snap-On Tools Corporation?

A. Since June of 1928.

Q. Now, will you tell us when you—you were the attorney that originally filed an application for Larson which matured into a patent now owned by Automotive, is that correct?

A. That is right.

Q. And when did Mr. Larson first make contact with you with respect to filing that application?

A. The early part of September, 1938.

Q. And what brought about Mr. Larson's going to your office, if you know?

706 A. Mr. Johnson called me on the telephone and advised he was sending in a mechanic by the name of Kenneth R. Larson; that Mr. Larson had submitted a torque wrench to Snap-On which their engineering department thought was a very good wrench and they would like to handle it if I knew of any way in which Snap-On could secure itself in dealing with an individual who had no credit standing or financial backing.

Q. Then what did you do after Mr. Larson came into your office and presented to you the torque wrench which he had submitted to Snap-On?

A. He came into my office with one of his wrenches and removed a cover plate and described the details of construction to me and advised me that he had had several conferences at Kenosha with my client; that they were ready to undertake some business relationship with him if I would okay a transaction between them.

Q. And will you identify the particular wrench or type of wrench Mr. Larson brought into your office in September, 1938?

A. One was offered in evidence here. I would like to look at the interior.

(A wrench is handed to the witness.)

707 Q. I am not interested in the details but just identify it.

A. At that time a wrench was handed to me by Mr. Larson that was similar to Defendants' Exhibit 2 with a slight modification.

Q. What did you then do after the wrench was brought into your office?

A. I told Mr. Larson that I would have to investigate the prior patents in the United States Patent Office before I could recommend to my clients that they proceed with the sale of the wrench he then submitted to me.

And I told him I was going to Washington on another matter in the course of about a week and that I would make that search and would report back to my client who, undoubtedly, in turn would contact him.

Q. And was there a business relationship set up between Larson and Snap-On shortly after you returned from Washington and made the search?

A. I would say within ten days thereafter.

Q. Were you instrumental in preparing the deal or the papers incorporating the relationship that was to exist between Snap-On and Larson?

A. The entire matter after discussion with Mr. Johnson and Mr. Daniel was left up to me to see the type of deal I could arrange that would be protective of Snap-On's interest having especial regard for the fact that they customarily did not like to deal with an individual without any credit or financial standing.

Q. And did you then prepare a preliminary understanding or a preliminary agreement as between Larson and Snap-On? And I am now handing you Defendants' Exhibit No. 61, which is a typewritten copy, not an executed copy.

(Handing exhibit to witness.)

A. This is the agreement that I prepared in the presence of Mr. Larson. I submitted a copy to him and sent a copy to Snap-On Tools Corporation for their approval or comments.

Q. And as a result of you submitting a copy to Mr. Larson and likewise a copy to Mr. Johnson, the document I have in my hand, defendants' Exhibit 61, was entered into?

A. Well, not directly thereafter but within three or four weeks thereafter.

Q. And that agreement covered the relationship as between Snap-On and Larson, is that correct?

A. It did.

Q. And the relationship having been set up where Larson was going to make wrenches and have them sold through Snap-On, what did you then do with respect to filing his application for letters of patent?

A. Well, provision was made in this contract whereby a patent application was to be prepared by Snap-On's attorney in the name of Larson and Larson in turn was to assign the patent application to Snap-On Tools Corporation.

Q. And why was the application to be assigned to Snap-On?

A. Well, I asked Larson if he had any tangible assets

of any kind or character or could have somebody of responsibility vouch for his conduct under this contract and he said he had no tangible assets and he didn't know who he could go to for any financial backing at that moment and the only property he had was this invention.

So, I suggested to Larson that if it was agreeable with him I thought that Snap-On would accept legal title to that patent application as security for his performance of that contract.

And, in that contract, I provided the conditions and terms under which that was to be reassigned to him.

Q. And who paid for your services as attorney in preparing the application and the government filing fee?

710 A. Well, it was also provided there in that contract that I was to bill Snap-On for those services and they in turn would deduct that from their accounts payable to Larson.

Q. And I notice in the agreement that there is a provision for defensive litigation. Will you please explain why it was necessary to include such a provision in the agreement?

Go ahead and tell us quickly the relationship as between Snap-On and Mr. Larson under his application which you were preparing and filing.

A. At the time of dictating this preliminary agreement, I set up, and so advised Larson that I would have to set up, a reserve fund to protect Snap-On Tools Corporation against two things; one was the possible institution of suit for patent infringement by third parties and the other was for indemnification in the event any court should decree damages or profits against Snap-On Tools Corporation; that the best way I knew how to do that under his financial circumstances was for Snap-On to deduct from his accounts payable a certain sum or percentage each time a bill was due him and in that way a fund would be accumulated which was to be held in a savings account in the City of Kenosha and that fund would bear interest at the then
711 prevailing rates of a savings account in that city and he agreed to that.

Q. And who owned the defense fund?

A. Well, Larson owned it. It was merely held by Snap-On as trustee.

There is also provision in this contract for the return of any amounts in the fund after a certain given time and

in the event Snap-On wasn't sued within that time or did not have a decree against them by virtue of its sale of that particular wrench.

Q. And, by that "particular wrench," you have reference to the wrench Larson was supplying to Snap-On?

A. Under this agreement, yes.

Q. Now, does Snap-On in making purchases from other companies require the setting up of any defense fund?

A. Well, they have two different ways of operating it. Most of their transactions are with firms of financial standing and I have advised them, and they have followed my recommendation in setting up a condition in their purchase orders which provides that the seller is to indemnify them in the event of a suit, not only for damages or profits, but for any expense they are subjected to.

In this case that did not apply because Larson admitted to me he had nothing and it was problematical with him as to whether or not he could acquire any financial backing but he thought that he could and we gave him that opportunity.

Q. At the time you prepared the agreement, he did not have the necessary funds for the preparation or filing of the application?

A. No, he did not.

Q. And you say, after preparing the agreement, Defendants' Exhibit 61, there were some three or four weeks elapsed before the actual signing of the agreement?

A. And some correspondence in connection with my client's reluctance in returning the agreement signed. They held the agreement there for some time.

Q. Were you advised as to why the agreement was held up?

A. Well, I wrote them several letters and I have them in my file.

Q. Will you just refer to them briefly?

A. Well, on September 28, 1938, I sent a transmittal letter with the preliminary agreement I had then prepared, and which appeared to be acceptable to Mr. Larson.

I asked them for their comments and, if it met with their approval, to sign it and return it to me.

713 Mr. Lindsey: You have no objection to me looking at these letters as he refers to them?

Mr. Freeman: None whatsoever.

Mr. Lindsey: I think I can shorten the cross examination a little bit, Mr. Freeman, and, if your Honor please.

The Witness: That letter was accompanied by the original and a carbon copy of the contract, this Exhibit 61. It was then signed by Mr. Larson in my office and it still required the signature of Snap-On Tools Corporation to consummate that written understanding.

Mr. Freeman: Q. Can you tell us why Snap-On delayed the delivery of the agreement back to you so it could be given to Mr. Larson?

A. Well, I had best refer to the correspondence.

Q. You go right ahead. Refer to the correspondence you have, all of which is available to Mr. Lindsey.

A. On October 4, 1938, I wrote Snap-On Tools, attention Mr. Johnson, telling them that:

"Mr. Larson called me today and asked whether or not I had heard from you in connection with the submitted contract."

I would prefer you would read that letter if you wish.

714 Mr. Freeman: I am now reading a letter of October 4, 1938 to Snap-On Tools Corporation, Kenosha, Wisconsin, attention Mr. Joseph Johnson, Vice-president

"Re: Torque Wrench—Kenneth R. Larson, File 11354.

"Dear Joe:

"Mr. Larson called me today and asked whether or not I had heard from you in connection with the submitted contract. I informed him that I did not and he then advised that you promised to call me on the telephone or get together at the earliest opportunity in connection with the submitted contract.

"If you have any further questions or desire more information in connection therewith, I certainly shall be pleased to either arrange for a conference at your office or have you call me on the telephone or write at your leisure.

"Thanking you for giving the matter any attention that you deem necessary for the moment, I remain

"Yours very truly,"

The Witness: On October 5, 1938, or shortly thereafter, I received a letter from Mr. Johnson of Snap-On Tools, dated October 5, 1938, which I hand you.

715 (Handing letter to counsel)

Mr. Freeman: And I now read a letter from Snap-On Tools, dated October 5, 1938 to Harry C. Alberts:

Report of Proceedings.

Harry C. Alberts,
First National Bank Building,
Chicago, Illinois.

Dear Harry:

Re: Torque Wrench—K. R. Larson, File 11354.

Yesterday, I wrote Mr. Larson to the effect that we were now ready to discuss this matter further and asked him to come to Kenosha tomorrow, October 6th.

After Mr. Larson has called, I shall let you know what further action should be taken.

Best regards,

Yours very truly,

Snap-On Tools Corporation,

(Signed) J. Johnson,

Vice-President & Treasurer.

The Witness: I replied to that letter under date of October 7, 1938, and also—

Mr. Freeman: Mr. Alberts, I think we can save some time if you would just give us—you know what is in 716 that correspondence—quickly why there was a delay in executing the agreement, and then make available to Mr. Lindsey here any of the letters you have so he can have them for examination.

The Witness: The following day I received another letter from Mr. Johnson giving me the reasons why that contract wasn't signed by Snap-On Tools Corporation.

I would have to read the letter to give you all the details which he had given to me.

Mr. Freeman: Under those circumstances, I will read the letter you have now handed me, which is a letter dated October 6, 1938:

Kenosha, Wisconsin,
October 6, 1938.

Mr. Harry C. Alberts,
First National Bank Building,
Chicago, Illinois.

Dear Harry:

Re: Torque Wrench—File 11354.

Kenneth R. Larson, of Des Plaines, Illinois, was in the office this morning, and preliminary steps were taken toward getting him into a position whereby he will be able to function as our supplying source of Tension 717 Wrenches. As you know, he is an individual operator without a plant and with very limited financial re-

sources. So, naturally, our first interest and consideration is in seeing that he is established upon a substantial basis. Some plans we have in mind will accomplish the results we are after; however, in the meantime, it is necessary for him to gather certain essential material for us upon which to base any financial assistance given to him, either personally or otherwise.

"In view of the importance of the interim data which has such an important bearing upon whether or not Larson is going to be a successful source of supply for us, we have refrained from executing the preliminary contract or understanding that was sent to us with your letter of the 28th. He has already signed both the original and duplicate copies, and whether or not we will execute them depends upon his ability to service us. Once we are satisfied that everything is in good order, we will get in touch with you and supply all of the details in connection with the matter.

"In the meantime, since we have Larson's signature to the preliminary agreement, I see no reason why we cannot hold off signing for another several weeks until we are more certain of our grounds and we believe you will agree that this is a conservative and safe premise upon which to work.

"Best regards.

"Yours very truly,

"Snap-On Tools Corporation,"

(Signed) "J. Johnson,

"Vice-president & Treasurer."

The Witness: When I received that letter, I thought certain things were troubling Mr. Johnson; that he didn't quite fully understand the measures I had taken in the contract to protect Snap-On Tools Corporation, so, I answered that letter under date of October 7, 1938, which I hand you. (Handing letter to counsel.)

Mr. Freeman: I am now reading a copy of a letter from Mr. Alberts to Snap-On Tools Corporation, dated October 7, 1938:

"Snap-On Tools Corporation,
Kenosha, Wisconsin.

"Attention Mr. Joseph Johnson, Vice Pres.

"Dear Joe:

"Re: Torque Wrench—File 11354.

"I have your letter of October 6, 1938 relative to

719 the above matter and wish to emphasize the fact that I did not intend to rush this matter through your office as there is no hurry except as to placing you in a position of procuring wrenches as and when such are required. It was not understood by me that you were going to help finance this source of supply and Mr. Larson repeatedly stated that he was in a position to fulfill the terms of the contract.

"I am wondering whether or not you have observed the condition in the preliminary contract that in the event Larson finds he is unable at any time to furnish wrenches to meet your requirements and specifications, you have the right to acquire these elsewhere or engage in the manufacture thereof in your own plant by paying a 5% royalty based upon your price to your branches.

"We have the assignment of the patent application as security for the patent expense and for any other requirements set forth in the contract. There is only one reason for executing the contract at this time and that is to preclude the possibility of Mr. Larson withdrawing the proposition. He would have the right to withdraw at any time prior to your actual signing of the contract and your 720 delivery of a copy of the contract duly executed to him.

Other than this possibility, there is no real hurry to execute the preliminary understanding.

"With kindest personal regards, I remain.

"Yours very truly."

The Witness: After that I had telephone conversations with both Mr. Daniel and Mr. Johnson about that contract. The thought occurred to Mr. Johnson that there is nothing to convince him that a mechanic like Larson couldn't have come from the Automotive Maintenance Machinery Co. and, although he denied that, what assurance did we have that he was an independent contractor without any connections with any competitor of Snap-On Tools Corporation?

Previous to that, in my opinion on the patent situation, after my search in the Patent Office, I advised Mr. Johnson that from my search, the Snap-On Tools Corporation was free to enter into some arrangement with Mr. Larson but I wanted them to be sure not to do so unless it was very clear and plain that Mr. Larson had no connection either with Automotive or with any other competitor of Snap-On Tools Corporation.

And then Mr. Daniel replied by saying over the telephone that that is one of the things that had been worrying them.

721 So, I called Mr. Larson in and told him the circumstances and advised him in a very emphatic manner that Snap-On would not be interested under any circumstances if he had any past, present or future connections with any competitor of Snap-On Tools Corporation and also Automotive Maintenance Machinery Co., and I required him to sign an affidavit to that effect in my office, of which a copy was retained in my file and the carbon went to Snap-On Tools Corporation.

Mr. Freeman: Q. And that affidavit is now in evidence as Plaintiff's Exhibit 8-A?

A. That is right.

Mr. Lindsey: May I see the letter that is attached?

The Witness: Surely, this is the letter underneath there (handing documents to Mr. Lindsey).

Mr. Freeman: Q. Now, Mr. Alberts, were you advised that Snap-On had given an order to Kenneth R. Larson under date of October 26, 1936?

And I am now handing you Plaintiff's Exhibit 4. I am using, of course, photostatic copies.

(Handing exhibit to witness.)

A. I did not get a copy of this from Snap-On Tools Corporation but Mr. Larson called me up and said he 722 received a copy of the contract properly executed and had an order and they were under way.

Q. And thereafter you continued to prosecute the Larson application?

A. That is right.

Q. And you were paid for that Larson application by Snap-On out of funds that were accumulated or to be accumulated that ultimately would go to Mr. Larson, is that correct?

A. That is right.

Q. Now, when did you first learn of the possibility of an interference in the Patent Office?

A. Well, under date of August 12, 1939, I received a notice from the Commissioner of Patents setting forth that they wanted a statement from the applicant Larson as to his date of conception, that there was a possibility of an interference with a senior party and asked me to submit a statement under Rule 93.

Q. And upon receiving the request from the Patent Office that you file a statement or, rather, Larson file a statement under Rule 93, what did you then do or have Mr. Larson do?

A. I wrote a letter under date of August 15, 1939, to Snap-On Tools Corporation and sent a copy to Mr. 723 Kenneth R. Larson. I have that letter here.
(Handing letter to counsel.)

Mr. Freeman: And I am now reading a letter from Mr. Alberts to Snap-On Tools Corporation with a copy to Mr. Kenneth R. Larson:

“August 15, 1939.

“Snap-On Tools Corporation,
Kenosha, Wisconsin.

“Atten: Mr. W. W. Daniel, Asst. Secretary.

“Dear Mr. Daniel:

“Re: Torque Wrench—Kenneth R. Larson, File 11354.

“This will advise that the Patent Office has asked for a statement under oath in the above entitled matter as to Mr. Larson's earliest date of conception with a view of declaring an interference in the United States Patent Office. This would mean that someone else has an application on file covering substantially the same type of structure.

“For your information, practically all the claims of the Larson patent application have been allowed in response to the last amendment.

“Because the Commissioner of Patents is asking Mr. Larson for a statement under oath as to his date of 724 conception, this would indicate that Larson was the last to file and that the other application was filed prior to his.

“I ask, therefore, that you have Mr. Larson consult with the writer at his earliest convenience and, thereupon, a statement will be prepared for his signature. His records and sketches should be presented at the time of the conference.

“With kindest regards, I remain

“Yours very truly.”

Mr. Freeman: Q. And after that did Mr. Larson confer with you with respect to making a statement under oath in accordance with the request by the Commissioner?

A. He did.

Q. And tell us briefly what you did when Mr. Larson

gave you his dates, that is, what sort of check-up did you make as counsel for Mr. Larson?

A. He gave me a date of conception of July 1, 1934 and that he had made full size wood patterns on July 15, 1934, which was about four and one-half years before his filing date.

I advised Mr. Larson that while I wasn't questioning his dates, the length of time that elapsed between his 725 conception and his filing was such that I would not be free to set forth such an early date unless he submitted something tangible in the way of evidence and that I could be reasonably sure he could prove those dates.

Q. What was submitted or what was done at that time?

A. I saw the patterns around here on a board. These patterns were brought down by Mr. Larson. They were not then on a board but he had them with him.

(Patterns handed to witness.)

Mr. Freeman: The witness has in his hand Defendants' Exhibit 7.

The Witness: And he had told me he made these himself in 1934 and that he had ordered castings from these patterns from a Mr. Schultz of the Ravenswood Foundry Company, and I asked him to bring down the invoices from the Ravenswood Foundry Company.

He called me up and said he couldn't find them.

I said, "Well, you go to the foundry and get copies of them or bring down their records."

He called me back and said, "They have found the records but they will not release them to me," and 726 that he didn't know how he could furnish the evidence.

I asked for because they belonged, the records belonged to somebody else over whom he had no control.

So, I called up Mr. Schnltz—

Mr. Freeman: Q. Of the Ravenswood Foundry?

A. Of the Ravenswood Foundry. (Continuing)—and told him who I was and that I was representing Snap-On Tools Corporation and I was also handling the patent application for Kenneth R. Larson and a matter has come up that required some evidence which Larson said he was in possession of, and I asked him if I could see his records.

He says, "Sure, come down."

I said it wouldn't be very convenient for me to get to his foundry and if he was ever in the loop, couldn't he bring them down or give them to Mr. Larson. I told him Mr.

Larson was in and out at that time and he could certainly bring them to me and take them back.

He said he would not release the records to Mr. Larson. I said, "Well, I still want to see those records. When will you be in the loop next?"

He said, "Well, I come down to the loop occasionally."

I said, "Will you be in the loop in the next week?"

727 He said he thought he would be, and I said, "Bring them down then."

And he did come to my office within several days and at that time he brought to me some sales books that are in evidence here. They were presented in the Interference.

728 Q. They are not in evidence here, they were in evidence in the Interference?

A. In evidence in the Interference; I saw them here, however.

Q. After these books were brought down by Mr. Schultz, what did you then do with respect to filing a statement on behalf of Larson under Rule 93?

A. Well, I had a discussion with Mr. Schultz first; I showed him the wrench that Mr. Larson had left; I showed him the patent drawings and I asked him if the sales sheet perhaps covered patents that related to that wrench; he said yes, they did. I asked him under what circumstances did you see these wrenches; and he said, "Well, Larson was buying castings from me right along; and at one time Larson brought over a wrench like that, and they were the castings that we had previously supplied." I asked him if he would so state under oath in the Interference, and he said he would be glad to.

Q. And thereafter in due course an Interference was set up in the Patent Office.

A. I prepared that statement under Rule 93, had Mr. Larson sign it, and sent it in to the Patent Office; and following that, on August 31—

729 Mr. Lindsey: May I see that affidavit, please?

A. Yes; that is part of my file—August 31, 1939. The Patent Office sent to me what is termed an official action preparatory to declaration of an Interference. They asked me to make three claims—

Mr. Freeman: Q. Mr. Alberts, I think we can save a little time, and especially that the Patent Application is now owned by Automotive and they have access to the en-

tire file,—can you tell us whether or not in due course an Interference was set up involving Larson as one party and Zimmerman as another party?

A. October, 1939, an Interference 77565 was declared by the United States Patent Office.

Q. In accordance with the usual practice in Interferences, Larson then filed a preliminary statement?

A. That is right.

Q. And will you give us quickly what he set up for his date of invention?

A. Mr. Larson set up.—May 20, 1936 he first made drawings of the invention; September 20, 1938 he first made a written description of the invention; that on or about the 12th day of September, 1934, he first explained the invention to others; and that the date of the first act or acts, other than the acts herein specified, which if proven 730 would establish conception of the invention, and a brief description of such act or acts are the making of pattern on it July 15, 1934; and that on the 10th day of September, 1934, the said device was first successfully used and operated in the city of Des Plaines, County of Cook, State of Illinois.

Q. And that was filed as a sworn statement by Mr. Larson?

A. That is right.

Q. And again, give us quickly what took place as between Larson and Zimmerman in the Patent Office following the filing of the Preliminary Statement; were there any amendments or motions made by either party?—Just give them to us quickly, so we have the general picture.

A. Zimmerman filed a motion to add counts; and they accompanied that with a memorandum in support of that motion. I filed a reply memorandum, and also moved to dissolve—and also opposed the counts on the ground that they were not obtainable through priority.

Q. And that preliminary sparring with respect to the filing of motions and amendments in the Patent Office which was filed by Mr. Fidler, how long a period of time did such sparring go on?

A. I have to look at the date of the decision on the motion. It was set for hearing February 21, 1940. Time 731 for briefs was given to both sides. March 11, 1940, the Patent Office rendered a decision thereon.

Q. And following that, there was an amended Pre-

liminary Statement, or rather a Second Preliminary Statement filed by Larson, in accordance with the reformed Interference?

A. That is right.

Q. And when was that filed?

A. June 14, 1940, the Patent Office reformed that Interference into new counts which involved a substitution of certain claims pursuant to the decision of the Patent Office.

Q. And new dates for the taking of testimony were set up on September 18, 1940; is that correct?

A. That is right.

Q. So that there was some eight or nine months elapsed after the declaration of the Interference at the outset and the time for taking testimony?

A. That is right.

Q. How did you get these Preliminary Statements signed; that is, where did you get the dates which were used by Larson in his Preliminary Statement?

A. Well, I followed the usual procedure I have always followed in my office; I had my stenographer prepare a 732 blank Preliminary Statement, including therein, in accordance with the form prescribed by the Patent Office, except the dates. I sent such a copy to Mr. Larson and told him that he should fill in the earliest dates that he could possibly prove; that I wanted only such dates that he could prove.

Q. And did those dates correspond with the preliminary information that Larson had given you in connection with the filing of the informal statement under Rule 93?

A. That is right.—I do not have a work sheet on the Preliminary Statement in my file.

Q. Tell us now quickly, Larson being the junior party, or having to put on his proofs first, what took place, or what happened with respect to Larson putting in his proofs?

A. I advised Mr. Larson what was required by the Patent Office in proceedings of this type to establish a priority at the instance of a junior party. I told him that the burden of proof was on him, because he had filed last; that he would have to testify in his own behalf, and have corroborating witnesses, more than two, or at least two; that he would have to have an abundance of documentary

evidence to substantiate and corroborate the verbal testimony of the witnesses.

733- Q. And were you compelled to get any extensions of time in connection with the taking of Larson's testimony?

A. I was.

Q. And of course, you got the extensions from Mr. Fidler?

A. I got several short extensions from Mr. Fidler.

Q. Did you ever advise Mr. Daniel of Snap-On as to any troubles that you were having in getting Mr. Larson to come in with his proofs?

A. I wrote several letters to Larson to come in with his proofs and his witnesses; and he called each time—I wrote him under date of October 28, 1939, and September 5, 1940, to come in and discuss the matter; we had to get ready.

Q. When you say you wrote him, whom do you have reference to?

A. Mr. Larson.

Q. Did you send copies of those letters to anyone at Snap-On?

A. The notes here do not indicate that I have; on two occasions—

Mr. Freeman: If you would like to see those letters, Mr. Lindsey,—

Mr. Lindsey: I can look them over now, and save a 734 little time.

Mr. Freeman: Q. Did you ever advise Mr. Daniel, or any one at Snap-On, asking them for assistance in getting Mr. Larson in with his proofs and his witnesses?

A. I called Daniel several times; and under date of September 13, 1940, I so wrote him, that I was having difficulty with Mr. Larson, and that he had better get after them to come in and not only protect Mr. Larson's interests but the interests of the Snap-On, that they acquired under their contract.

Mr. Freeman: I would like to read the letter referred to by the witness Alberts: Dated September 13, 1940, addressed to Snap-On Tools Corporation, W. W. Daniel, Assistant Secretary. Re Larson vs. Zimmermar—File 11484. Interference No. 77565.

“Dear Walt: I have been unable to get Mr. Larson to confer with me so that a deposition could be taken in the

Report of Proceedings.

above entitled case before September 18, 1940. I have re-examined the entire case with a view of preparing myself to question Mr. Larson, his business associates and such other witnesses that they may have available to establish their case.

"It is now too late to hold the deposition on or before September 18, 1940 and on that account I was compelled to seek an extension of fifteen days. This extension was forthcoming with some difficulty, and I am certain we cannot get any additional extension.

"Therefore you had better contact Mr. Larson and ask them why they have not cooperated. It is just as expensive to permit me to go ahead and prepare for the taking of the deposition and then not proceed therewith as it is to go through with the deposition.

"I would appreciate a copy of your letter to Mr. Larson. With kindest regard, I remain, Yours very truly, Harry C. Alberts."

The Witness: Under date of September 16, 1940, Mr. Daniel replied to my letter.

Mr. Freeman: And I now read the letter from Daniel of Snap-On to Harry C. Alberts, dated September 16, 1940, First National Bank Building, Chicago:

"Dear Harry; Re Larson vs. Zimmerman, File 1474 Interference No. 77563. We have your letter of September 13th with regard to the difficulty getting Mr. Larson to confer with you on the deposition; and this matter was discussed today, Saturday, with Mr. Johnson.

"We are calling Mr. Larson into the office for a conference on Tuesday morning, September 17th, and shall reach a definite understanding with him at that time regarding this matter. We are not sending you a copy of a letter to Mr. Larson; as we shall call him up and ask him to go in for a conference.

"With best regards, Yours very truly, Snap-On Tools Corporation, by W. W. Daniel, Assistant Secretary."

Q. Now, you finally had Mr. Larson come in; is that correct?

The Witness: A. He finally came in and told me that his two main, important witnesses, Mr. Whitaker and Mr. Hynes were in Arkansas on another matter, not pertaining to his business; and they could not possibly be back, and I had better get another extension; which I attempted

to do. And I communicated with Mr. Fidler, and he granted a short extension for that purpose.

Q: And when was a notice of taking testimony served on Mr. Fidler; give us the date when the deposition on behalf of Larson was to be taken.

A. I have a notice right here.

737 Q: Can you just give us the date for which testimony was set?

A. I served notice that I would take the testimony of the specified witnesses on October 24, 1940.

Q: And was their testimony taken on October 24, 1940?

A. The day before October 24th, Whitaker and Llymes came in, and I started taking the deposition the following day.

Q: That is, they came in a day before and talked to you?

A. That is right.

Q: Then over a period of how long were the Larson depositions taken?

A. I expected to complete them in two days; and they took about five days.

Q: And those depositions were taken by a reporter by the name of Raftery?

A. That is right.

Q: Now after the taking of the depositions in behalf of Larson, tell us quickly what took place.

A. Well, Mr. Fidler went into very extensive cross-examination of all of the witnesses, and primarily Mr. Larson and Carlsen; and the time was going on and on endlessly; he was going into what I considered then a fishing expedition, not pertinent or germane to the Interference; and I halted the deposition and instructed the witnesses not to answer certain questions as to who their stockholders were.

Mr. Fidler certified the questions to Judge Barnes and this Court; and Judge Barnes denied their motion of certification.

Q: In other words, your witnesses did not have to answer.

A. That is right.

Q: Then, after the denial by Judge Barnes, was there any further testimony taken?

A. There was some testimony taken; I think Mr. Larson was not quite finished then, and they continued to complete his testimony.

Q. That is, when you say they completed,—was that cross-examination?

A. Mr. Fidler completed his cross-examination. He was the last witness in his own behalf.

Q. Now, after completing the taking of the testimony, when did you next hear from Mr. Fidler, and in what connection?

A. November 20th, the morning of that day, of 1940, Mr. Fidler called me and said that he had certain information which would be of interest to me in connection with the Interference, and would I come over to talk over the matter with them. I replied by saying I would be glad to, and asked him when it would be convenient for him to see me. And we agreed upon 1:30 p. m. of that day; and I went over there at that time.

Q. And tell us now, with as much detail as you can, what took place when you conferred with Mr. Fidler on the 20th of November, 1940, at his office.

A. Well, after the usual greetings he told me that as a matter of professional courtesy he wanted me to know certain facts about the deposition that was taken on behalf of Larson; that he had a large affidavit in his possession, which he pointed out, that proved beyond a doubt that Larson was committing perjury, and certain witnesses on behalf of Larson. They knew that I could not have known anything about it, by virtue of my conduct in the deposition and throughout the deposition; and would I like to hear what he had.

I said I certainly would be glad to hear what he had. He then told me that he was not at liberty to let me have the affidavit which was in his possession, and which he skimmed through the pages and fanned them out; and I saw the notarial seal on a good many of the pages; and I estimated then there was about one hundred pages of that affidavit; but he would give me the highlights of what was therein contained.

Q. And did he then on November 20, 1940, give you the highlights of the affidavit?

A. He proceeded to give me summary statements of what was in that affidavit, and that Thomasma subscribed to that affidavit; and had enough explained just what Thomasma had to say about particular exhibits in the Interference and about certain details, which I knew that

nobody besides Larson and anybody associated with him would know.

And I told him I was quite surprised, and I certainly am being put in a very embarrassing position here by Larson; and that I wanted to check further. But at that time he gave me, or handed me, a drawing which he said that Mr. Thomasma had prepared, that had no bearing on the structure in the Interference; but he merely wanted to show it to me so that I could compare it with Exhibit 27 in the Interference. Exhibit 27 was that large drawing which is in evidence in this case.

Q. As Defendants' Exhibit No. 9.

A. He pointed out to me numeral characters and 741 the printing on that drawing, which he then told me was a sketch of an abrasive chuck, but that it had no bearing on what I was there for, except to see how similar the characters were on that drawing with those in Exhibit 27.

I made an examination; I told him that I was convinced they were made by the same parties, and it looked very much like Larson had given false testimony; and I would appreciate it if he would have Mr. Thomasma available at some future time; I wanted to question—I wanted to call in Mr. Johnson and have him hear directly from Mr. Thomasma just what he had to say about Larson, and the testimony given on behalf of Larson.

Q. I hand you Defendants' Exhibit No. 22, which is a drawing; and will ask you to examine it and tell us whether or not that is a photostat of the drawing which was presented to you by Mr. Fidler on November 20, 1940.

A. That does not look like that particular drawing; but it was one very much like it in appearance. If I could see the original, my recollection would be better on it.

Mr. Freeman: May we have the original?—Mr. Fidler, you have never been able to find this other drawing? There was some other drawing that was presented to you by Mr. Thomasma for purposes of comparison; am I right in that?

742 Mr. Fidler: Mr. Thomasma had at various times presented me with drawings.

Mr. Freeman: Q. Look at the original here.

The Witness: A. Well, this is not the drawing.

Q. Well, was there a drawing presented to you there

on November 20th by Mr. Fidler, which he told you was made by Mr. Thomasma?

A. There was.

Q. And did he tell you why he was giving you that Thomasma made drawing?

A. Yes, he did.

Q. And what did he say?

A. He told me that he wanted me to come to a conclusion as to whether or not Thomasma's statement was correct with respect to Exhibit 27, and that he thought that to convince me that Thomasma's statement with respect to Exhibit 27 was correct, and that Larson's was false. And I looked at both very carefully, and came to the same conclusion, that they looked like they were made by the same person.

Q. And Mr. Fidler definitely told you that the drawing he was handing you for the purpose of comparison was a Thomasma made drawing?

743 A. That is right.

Mr. Lindsey: I object; let the witness testify.

Mr. Freeman: Q. Tell us what he told you.

The Witness: A. He said here I have a drawing, the structure of which has nothing to do with this Interference we are talking about; I am merely giving it to you so that you can look at it and examine it with and compare it with Exhibit 27; if you can come to some conclusion as to the characters and likeness of the characters between the two drawings. And I examined both.

Q. And did you make any comment, after making an examination of these two drawings?

A. I told Mr. Fidler it certainly looked like they were made by the same person; and that undoubtedly Mr. Larson did not make; or have some high school boy make that Exhibit 27.

Q. And after having had the information conveyed to you, that you now testified about, what arrangements did you make for meeting Mr. Fidler further?

A. I told Mr. Fidler that I would like to call Mr. Johnson on the telephone that day and make an appointment for a conference at his office, if he would have Mr. Thomasma available for questioning. I wanted Mr. John-

744 son to hear his statements directly; I wanted Mr. Johnson to be able to come to his own, independent

conclusion with respect to Snap-On's future relations with Larson. And he said he would be very glad to.

And I returned to my office; I called Mr. Johnson, I told him in a general way what had happened. He said that he was leaving town in several days, and that he thought he would be back by November 28th; he would be back in Chicago on November 28, 1940. And I asked him if he was reasonably sure he would be back that day, and he said that he thought he would be.

I called Mr. Fidler either that same afternoon or the next morning and told him my conversation with Mr. Johnson, if November 28th was convenient that we would tentatively set it for that date; and if there was any new occurrences in the meantime, that I would get in touch with him. And I asked him if he would hold the whole matter in abeyance for that week; and he promised me that he would.

Q. And then on November 28th you met Mr. Joe Johnson, who testified here this morning?

A. I called the Chicago branch office of Snap-On Tools Corporation, and asked them if they expected Mr. Johnson that morning. That was the information the Ken-745 osha office gave me. Mr. Edwards of that office told me that he was going to meet him at the train; and I told him to be sure to bring him over, which he did.

Q. And when did you meet Mr. Johnson?

A. He came in shortly before the conference. He came into my office shortly before the conference was scheduled at Mr. Fidler's office. I think the time for that conference was 10:30 in the morning.

Q. Did you have any discussion with Mr. Johnson in your office prior to going over to Mr. Fidler's office?

A. I did not; he asked me, and I said, according to your own instructions,—you said I shouldn't; and I did not.

Q. And you then went over to Mr. Fidler's office?

A. That is right.

Q. Now tell us just what took place when you and Mr. Johnson entered the offices of Davis, Lindsey, Smith & Shonts?

A. Well, we arrived there about 10:30 in the morning. I asked the telephone girl if Mr. Fidler was in, that we had an appointment with him. She said that he was in, that we should be seated. We sat down and waited 746 there for about twenty minutes. Mr. Wacker and Mr. Allen entered the outer door and walked past us. Mr.

Johnson said how do you do to them; and they didn't even reply to his announcement, and walked directly into the private offices. And soon thereafter we were called in.

Q. Now tell us, when you were called into Mr. Fidler's private office, just what took place.

A. We all shook hands, and everybody was there that I understood would be there, except Mr. Thomasma. And we all were seated, and Mr. Fidler made a statement to me that he was proceeding on the basis that Snap-On was Precision and Precision was Snap-On, and only under those conditions or under that understanding would he give us the information directly from Mr. Thomasma, whom he had in another office, or could be produced.

Q. What did you say?

A. I said we were here in behalf of Snap-On Tools Corporation, and Snap-On Tools Corporation alone; under no circumstances would I subscribe to that misunderstanding; that that was not true, that never has been true and it was not true now. And I certainly would not even want to continue further under those conditions.

Q. And then what happened?

747 A. Well, Mr. Fidler was quite shocked that I took that position as abruptly as I had taken it. And he said, "Well, Snap-On's hands are not too clean in this matter either." And then Mr. Johnson replied by saying that Snap-On's hands were clean, not only in this matter, but all other dealings; that they had dealt in the past, and would continue in the future to deal on a high plane. And for a moment nothing was said by anybody. Finally Mr. Fidler said to Mr. Wacker, "What shall we do about it?" Or, "What do you think we should do?" Mr. Wacker replied and said, "Well, it is up to you." And Mr. Fidler said, "Well, you are here now. I told you I would get you the information first hand. I have Mr. Thomasma here. We might as well go ahead with the conference." And we then proceeded. He called in Mr. Thomasma.

Q. That is George B. Thomasma?

A. George B. Thomasma. He was introduced to Mr. Johnson, and he was introduced to me. We shook hands; that was the first time I had seen him. Mr. Johnson remarked to me after we sat down that that is the first time he had seen him. Mr. Fidler asked me if I wanted to ask the questions, and I said, "Well, you go ahead; you are
748 more familiar with what you want to produce than I am. You ask him the questions, and if I have any-

thing to add I will ask permission later on to direct some questions to him."

And Mr. Fidler proceeded to ask him questions in a very formal way, that approximated the conduct of a deposition, except that Mr. Thomasma was not sworn, of course. He went into the details surrounding the evidence that was presented in the Interference. And that went on for quite some time. And then Mr. Thomasma again stated, or corroborated that Mr. Fidler had—what Mr. Fidler had told me the previous week.

Q. November 20th, 1940?

A. That is right; that he had made that drawing. And I asked him to identify it. He described the paper it was written on, I mean drawn on. He told me, or told us, rather, that had had made it on a Sunday afternoon, when his brother, I think it was John Thomasma, was present; that that afternoon they had sent their wives to the movies, and he worked on the drawing; and his brother was right there with him, and would prove that he made the drawing at that time.

He also went into his past connection with Automotive Maintenance Machinery Company.

Q. That is whose connection with Automotive Maintenance Machinery Company?

A. George Thomasma's connection; and about his resignation being requested by Mr. Wacker, and how he had met Mr. Larson, the year he had met him, the circumstances under which he had met him. He gave me such details that convinced me that he knew more about this Interference than I had known while I was conducting the deposition. I was convinced then that Thomasma was telling the facts accurately, and that apparently Larson was not telling the true story.

Q. And about how long did that examination or questioning by Mr. Fidler, of Mr. Thomasma, take place?

A. I assume that it took about an hour and a quarter, before it was completed.

Q. Did you ask Mr. Thomasma any questions?

A. When Mr. Fidler said that he was through, and asked me if I had any questions, I said I had a few questions; and he said go ahead. So I examined Thomasma on what he had known about Snap-On Tools Corporation, and about myself; if he was the inventor of this, why didn't he come in to see me. He replied by saying that Larson

and Carlsen refused to allow him to come and see me; 750 that he wanted to come and see me, but they absolutely prohibited him from coming to see me.

I asked him if he had gone to Snap-On Tools Corporation about this matter. He said that he had accompanied Larson to the plant at one time but did not go in, at the insistence of Mr. Larson. I asked if he had met Mr. Joe Johnson then; he said no. I asked him if he had met me before, and he said no, he did not. I asked him why he did not come to see me, if he was the inventor he should have told me about this invention, and I could then have prepared the application in his name, if he was the inventor; that was the proper way of doing. He said that Larson and Carlsen insisted if I knew that any ex-employee of Precision was connected with the Snap-On, they would cancel the contract. That was the thing they could not afford to have happen, and they knew that neither I nor Snap-On Tools Corporation would stand for Thomasma's connection with Precision.

Q. Then what did you say, or what took place after you were through examining Mr. Thomasma?

A. Well, we got our coats and hats; we stood up and were about to leave, when I made the statement to Mr. 751 Fidler that under all of the circumstances that were presented to me at that meeting, that I would withdraw as attorney for Larson, that I would recommend to Snap-On Tools Corporation that they consent to Larson conceding priority of invention to Zimmerman; that they would use their influence on Larson to see that that was done; that I saw no other way out of it.

Q. And why would it be necessary for Snap-On to acquiesce in a concession of priority from Larson to Zimmerman?

A. Snap-On was the legal title holder of record in the Patent Office, and they would not accept a concession of priority by Larson without our consent or the consent of Snap-On.

Q. And Snap-On was the legal title holder, in accordance with that agreement that you referred to?

A. Preliminary agreement.

Q. Exhibit 61?

A. That is right.

Q. And had Zimmerman prevailed in the Interference by his proofs, would he have gotten any more than what

you were willing to give and recommend at that time that Snap-On give to Zimmerman?

Mr. Lindsey: I object to the question; that is putting words in the mouth of the witness.

752 Mr. Freeman: This man is a lawyer, your Honor; I don't need to lead him.

Mr. Lindsey: He didn't testify that he was willing to give—

Mr. Freeman: He has made the statement here he would recommend a concession of priority.

Mr. Lindsey: He said nothing about giving a concession of priority.

Mr. Freeman: Q. Tell us now what, exactly, you told Mr. Fidler you would be willing to do.

The Witness: A. I told Mr. Fidler that I would be willing to have Snap-On consent to a concession of priority, and upon my recommendation I knew that whatever I recommended would be acceptable to Snap-On; and I knew that whatever Snap-On insisted of Larson, he would do.

Q. And I now ask you, had Snap-On followed your recommendation, and had Larson conceded priority to Zimmerman, would Zimmerman have got everything that he would have got had he prevailed in the Interference?

A. That is precisely what they would award to Zimmerman, had he won on the merits.

Q. And you made that statement to whom?

A. Mr. Fidler.

753 Q. On what date?

A. November 28, 1940, a few minutes before we left the conference.

Q. And what did Mr. Fidler say to you when you made that proposal, or stated that you would make a recommendation of that kind?

A. Mr. Fidler came up to Mr. Johnson and myself and told me that Mr. Wacker had spent over five thousand dollars investigating Larson and his associates; that a concession of priority alone would not satisfy him; that not only would it not satisfy him, that this matter had to be settled to the satisfaction of Mr. Wacker, and settled promptly, or else Mr. Wacker would instruct him to unleash the dogs. And he continued by saying that he had already talked to the Patent Office officials, and that if Mr. Wacker was compelled to go to Hartford to prove his case, and to go through with this thing at the additional expense,

that he certainly would have to go to the District Attorney with this matter.

Q. Was there any mention as to why Mr. Wacker would have to go to Hartford?

A. Mr. Zimmerman was then residing at Hartford. During the discussion they told us that Zimmerman no longer was with Automotive Maintenance Machinery Company, and that he was then living in Connecticut. And Mr. Fidler and Mr. Wacker got into a discussion as to the merits of Mr. Zimmerman as an engineer; with which we were not of course interested.

Q. And what happened after Mr. Fidler made the statement to you that concession would not be satisfactory; what did you tell him, or how did you part company with Mr. Fidler?

A. Well, I couldn't say very much as to that; I told him that he would hear from me or Larson, or some attorney in behalf of Larson; he certainly would hear from me on behalf of Snap-On Tools Corporation; from there on I was representing Snap-On Tools Corporation, and Snap-On Tools Corporation alone; and Mr. Larson would have to get another attorney, and he would undoubtedly hear from his attorney.

Q. And you and Joe Johnson then left the meeting?

A. Then left the meeting, and returned to my office. It was then about 1:00 o'clock, and I called Mr. Larson immediately.

The Court: Take a recess for about ten minutes.

(A short recess was taken.)

755 Mr. Freeman: Q. You and Joe Johnson returned to your office?

A. That is right.

Q. And then what did you do?

A. I told Mr. Johnson that I was going to call Mr. Larson at once, and when I arrived at my office I called Mr. Larson. He answered the telephone and I told him Mr. Johnson was here and that both of us would like to talk to him, and also for him to bring Mr. Carlsen along. He replied by saying that he couldn't just get away that moment, that he had other important things to do that needed attention, that Snap-On wanted wrenches, and he had to work there for at least several hours. Well, I told him that this was a very important matter and he had better

get down there and get down to my office fast with Mr. Carlsen, and he said, "All right, I'll be down."

He came in about forty minutes. In the meantime Mr. Johnson and I had a discussion between ourselves. I told Mr. Johnson he had better look for another source for torque wrenches, they had better start doing that immediately, and that I was convinced that Larson was falsifying his entire case and that I would know when they got down there. We waited.

Mr. Larson came in with Mr. Carlsen. I asked them 756 to sit down. They both did. I told them that I had been over to Mr. Fidler's office with Mr. Johnson that morning, and Mr. Thomasma was there, George Thomasma, and that Mr. Wacker was there, and Mr. Allen, and that that meeting was held by pre-arrangement of last week with Mr. Fidler, and that Mr. Fidler examined Mr. Thomasma at great length as to his part in the development of the wrench, he was then selling to Snap-On as his own invention, and that I knew all about Exhibit 27, I had it there, and I showed it to him.

Thomasma went into great length to convince me that he was the author of that drawing, and not Larson, and that a high school boy did not make that drawing and that Thomasma made it on Sunday afternoon at his request, and that his brother was ready to prove that he was there while it was being made.

Q. Whose brother?

A. Mr. Thomasma's brother.

I said, "Frankly, Mr. Larson, I am satisfied that there is something wrong with your case and with your testimony. Now, how about it?"

Well, he turned red and was fidgeting in his chair there, and he refused to answer for a moment, and I again repeated, "How about it?"

757 He said, "I won't say yes and I won't say no," and he sat there mute, just like that.

I said, "That is a very unsatisfactory answer; I want to know. I have dealt fairly with you up to now. It is true I am the attorney for Snap-On Tools Corporation. I don't think you can say I have taken advantage of you or your position, and I am being placed in a very embarrassing position here by virtue of what has been going on, and I propose to find out today and find out at once."

He then repeated again, "I won't say yes and I won't say no."

About that time I got a bit impatient, and I told him that as far as I am concerned I will take that for a Yes, but he has got to say yes or no before he leaves that office. I then explained why it was so necessary for Snap-On to know and for him to know just where he stood if his answer was No and where he stood if his answer was Yes, that as far as I am concerned he didn't have to answer but Snap-On had a right to know, and they had a right to know where they were going from there on.

I said, "If your answer is Yes, it is just you had better get another lawyer and get him fast, because you are 758 going to need one, and if your answer is No, I don't see why you can't continue with the Interference, that as far as I can see the testimony given by you in your behalf will establish priority if the testimony was accurate and if it was honest," that the dates established through him and by his corroborating witnesses and by the documentary evidence was prior to the dates set forth in the Zimmerman Preliminary Statement, and that there was every reasonable assurance that he would receive the award of priority if his testimony and evidence in that proceeding was true, and I told him that I wanted to know, that it was his obligation to tell me, that he had better tell me.

And he said, "Well, I think it is about time we had our own lawyer in this case anyway."

I said, "That is all right with me. Whom do you want to have?"

And he said, "Well, I used to know a Mr. Andrews."

I said, "You can't get Mr. Andrews. He is dead."

He said, "Well, whom would you suggest?"

He said, "Well, Mr. Larson, you have placed me in a very embarrassing position once. Now you are doing it again. I wouldn't like to suggest anybody because this is a 759 very, very delicate situation, you need a good lawyer, and you had better get one." And he went on to say that he didn't know of anybody and he would appreciate it if I would give him some names. So I told him that under those circumstances I would be glad to recommend some attorneys, that Chicago was full of good attorneys, and that he could see somebody who would protect his interests as such appeared at this time.

I gave him the names of about three attorneys, as I remember. I told him, from what I had given him, that he

couldn't possibly intelligently select any one of the three, because he knew nothing about them, and that I don't know what good that would do him for me to suggest any names.

He had done some thinking about the attorney, to decide what he wanted that attorney to do for him, because he had so far told me nothing as to the status of this matter as far as he was concerned; that when he told me what the actual fact is, from what we heard, that I would be in a better position to recommend somebody.

He said, "I still want to get our own attorney." He said, "I think this is about the time to get one."

Well, I wasn't getting anywhere with him, so I gave him the names of several attorneys, and among which was M. K.

Hobbs, whom I had known, and I recommended several more. He took down the names. I think I put them down on the three-by-five card in my own handwriting, and their addresses, and I said, "You still haven't answered my question, and before you leave here I want you to tell me whether or not Thomasma's story is true or whether your story is true."

He finally said, "Well, my testimony is false and the whole case is false," and he ran out and Carlsen ran after him, and from there on I heard, I think the next day, from Mr. Hobbs.

Q. Do you happen to have in your files a memorandum that you prepared shortly after your conference of November 20, 1940?

A. I have a memorandum that is entitled "Larson vs. Zimmerman, Interference 77565; Conference held with Mr. R. A. Fidler at the office of Davis, Lindsey, Smith and Shonts, 332 South Michigan Boulevard, between 1:30 p. m. and 4:30 p. m., Wednesday, November 21, 1940, at the telephonic request of Mr. Fidler."

I have since found out that that date of November 21, 1940 should be November 20, 1940.

Q. And when did you prepare the memorandum that you are now reading from?

A. When I got back to my office I called Mr. John 761 son, and right after I finished talking with him I took notes of what had transpired in my conversation with Mr. Fidler, and the following work day, which was the day after Thanksgiving, I dictated from those notes to my

stenographer, and this memorandum is the result of that dictation.

Q. And you dictated the memorandum that you hold in your hand from notes that you made after you returned from Mr. Fidler's office?

A. That is right.

Mr. Freeman: We offer in evidence as Defendants' Exhibit No. 70 the memorandum just referred to by Mr. Alberts.

You have already been given a copy of that memorandum.

Mr. Lindsey: Yes. Could the record show that that was marked Automotive Exhibit 12 in one of the pre-trial depositions?

(Said document was thereupon received in evidence by the Court and marked as DEFENDANTS' EXHIBIT NO. 70.)

Mr. Freeman: Q. After the conference of November 28th with Mr. Larson and Mr. Carlsen, after you had returned from the conference at Mr. Fidler's office, when did you next get in touch with Snap-On?

762 A. After Larson and Carlsen left, Mr. Johnson said to me, "What now?"

I said, "Well, the best thing to do is to get the matter to your associates. I would be glad to go to your office at any convenient time, put the matter before them, and let them decide what now."

He thought that was a good idea, and he said, "How about a date?"

I said, "Well, any day will suit me. This matter is urgent. Why not tomorrow?"

And he said, "I will let you know. If tomorrow is all right, you make arrangements with your office so that you can get away if we want you. I will call you," and he did call me the next day to come on, and I got there about one o'clock in the afternoon.

Q. Of the 29th?

A. The 29th.

Q. What did you do, or what was your purpose in going to Kenosha?

A. To put the matter before Mr. Johnson's associates and executives.

Q. And tell us briefly what you there presented?

A. I got there and they assembled, the executives, and

the chief engineer was called in, and the purchasing 763 agent was called in. Mr. Daniel was there, and Mr. Nemitz, Mr. Johnson, Mr. Palmer, Mr. Seidemann. I might say the purchasing agent was Mr. Tetzlaff, and the chief engineer was Mr. Walraven. And Mr. Johnson called that meeting in the conference room there and sat at the head of the table and told his associates that I was there to set forth the status of the Snap-On-Larson contractual relationship from the very inception to what has happened to date, and he warned them that certain startling things have happened, and he was going to let me give the entire statement to them, and after that they can ask me whatever questions they want to.

So I started from the very beginning and recited the steps that were proceeded with from the time that Larson was sent into my office to the time that I talked to Mr. Larson yesterday, and that he admitted he had told a false story and that he had procured other witnesses to corroborate his false story. I said that the matter was a serious one, but I wanted to assure the executives that whatever did happen does not involve Snap-On Tools Corporation one iota except that they have to look for another source of supply, that was certain, that they would have to get another torque wrench if they wanted to be in the torque wrench business.

Q. Coming back to this conference at Mr. Fidler's office, was there any mention of suspicion by any of the people there on behalf of Automotive?

A. No mention—no word like "suspicion" was used. As far as I could gather, it was all out and dried, and as far as Fidler was concerned he let me know he had the goods, and he expected to deliver the goods. That is the way it was put to me at both of our conferences.

Q. That is, when you say both of the conferences, you are referring to the November 20th conference and the November 28th conference?

A. That is right.

Q. And it was as a result of your conference with Mr. Fidler on the 28th with Mr. Johnson that you confronted Mr. Larson in your office with the facts?

A. That is right.

Q. When you explained what had been told to you, Mr. Larson finally admitted—

Mr. Lindsey: I would like to have the witness testify.

Mr. Freeman: Q. Well, tell us then, Mr. Larson—

Mr. Lindsey: Don't put words in the witness' mouth. This is a critical—

The Court: I thought you had gone over this once.

The Witness: I have gone over this.

765 Mr. Freeman: Q. Tell us quickly.

A. After much hesitation—

The Court: What is the use of having him tell it again?

Mr. Freeman: All right, I will withdraw it, your Honor.

The Court: Unless there is some particular point to it. The witness has told the story once.

Mr. Freeman: Q. Then what happened next after your meeting at Kenosha on November 29th, 1940?

A. Well, Mr. Hobbs called me, I would say, about the 29th of November, 1940, and told me that Larson and Carlsen were in his office, and I said, "I suggested you as an attorney and I know all about their difficulties."

He said that he had had a conference with them, a short conference, wanted to think the matter over. They had told him there was perjury in the case and he wanted to know how I felt about it, and I said, "Well, I want you to know, Mr. Hobbs, right now, that I had no knowledge of anything that had developed up to November 20th 1940 when Mr. Fidler called me into his office. I want to set you straight on that right now."

He said, "Well, I have talked to Larson and Carlsen about that and they have admitted they have concealed that from you. That is not what I am calling you about."

He said, "What do you think of the situation?"

766 I said, "I think it is a very bad situation. They are going to have a hard time from now on, and that the people that you have to deal with are not the easiest people to get along with, that they have let that fact be known to me already," and I then repeated what Mr. Fidler had told me at the end of that conference, that I had for the first time in my life heard the expression, "unleashing the dogs," and that to me meant that they really were going to go after Larson and Carlsen, and that I might as well let him know what is coming.

He said, "Well, what do you suppose ought to be done in the matter?"

I said, "Well, if I had my way about it and could possibly be in the position to give him advice—and I am not telling you what they should do—I frankly feel that a con-

cession of priorities should go to Zimmerman voluntarily, at the instance of the opposing side, or send it direct to the Patent Office, if they won't accept it, and I think it would be easier for Larson and Carlsen to face the music now than at any other time."

He said, "Well," he thought that the best thing to do would be to try to make a settlement, he thought he could effect a settlement.

I said, well, whatever he thought he could do for 767 then, he should submit to me and I am sure Snap-On will go as far as it possibly can to avoid any further pressure on Larson and Carlsen, that all we wanted to do was to fill our present commitments, and from there on we didn't want to have anything more to do with that contract or with Larson and Carlsen.

Mr. Freeman: Mr. Fidler, do you have Mr. Alberts' original letter of December 3, 1940?

Mr. Fidler: Just a moment.

Mr. Freeman: Q. Do you have your carbon copy?

A. Yes, I have a letter addressed to Davis, Lindsey, Smith and Shonts, December 3, 1940.

Mr. Fidler: Let the record show I have just handed counsel for Defendants a copy of the letter which I presume is the one he had in mind.

Mr. Freeman: That is correct, letter dated December 3, 1940.

We offer this letter from Mr. Alberts to Davis, Lindsey, Smith and Shonts, dated December 3, 1940, in evidence as Defendants' Exhibit No. 71, and we are agreed we can substitute a photostatic copy?

Mr. Lindsey: Yes, sir.

Mr. Freeman: So that you may have the original for your files.

768 (Said document was thereupon received in evidence by the Court and marked as DEFENDANTS' EXHIBIT NO. 71.)

(Defendants' Exhibit No. 71 was thereupon read to the Court by Mr. Freeman.)

Mr. Freeman: Q. After you had conferred with Mr. Hobbs on the telephone what was the next event that took place?

A. Well, I didn't hear from Mr. Hobbs until he sent me a copy of the letter under date of December 6, 1940, which contained a proposition of settlement to Mr. Fidler. I

did not participate in that proposition. He was merely advising me what he was offering in behalf of Larson.

Q. After the proposal made by Mr. Hobbs in accordance with his letter of December 6, 1940, what took place thereafter?

A. Well, on December 13, 1940 Mr. Hobbs called me in the morning and said he had expected Mr. Lindsey and Mr. Fidler at his office for a conference on the matter; would I care to attend. I said I would be glad to attend, and I did attend.

I might say that before that call from Mr. Hobbs I received a telephone call from Mr. Hobbs prior to that, and also a call on the same day from Mr. Lindsey.

Q. And do you have any memorandum with respect 769 to the telephone conversation that you had with Mr. Hobbs?

A. Yes. I prepared a memorandum on December 11, 1940 that contains the facts given me by Mr. Hobbs and also the request made by Mr. Lindsey and, on the same day, my replies to that request.

Q. And did you send copies of that memorandum to Snap-On?

A. Well, I sent a copy of the November 20th conference memorandum to Snap-On and I also sent this memorandum, December 11th, 1940, with a covering letter of December 12th, 1940 to Snap-On Tools Corporation.

Mr. Lindsey: I have never seen it. I wonder, Mr. Freeman, if you will ask the witness if this was in his possession at the time we made a call for the production of all the documents including his memorandum to Snap-On.

Now, as I recall, the two memoranda which have already been produced, that is, the one concerning November 20th conference, and the one concerning the November 28th conference, and probably this, were not produced, although it was represented to us at the time we called on Mr. Johnson to take his pre-trial deposition there was a full demand, and the other two memorandums, that is, the one with respect to the November 20th, and the one with respect to November 28th, were withheld until Mr. Alberts, the 770 last witness whose deposition was taken, testified.

These other two memoranda, the one with respect to November 20th and the one with respect to November 28th conference were used by you during the examination of Mr. Fidler when you took his deposition.

Is that a correct statement, Mr. Freeman?

Let us get it on the record.

Mr. Freeman: Frankly, I can't follow you. I haven't that sort of a retentive mind.

Mr. Lindsey: I state it to be a fact, may your Honor please.

Mr. Freeman: Let me state, if any memoranda were not given—

The Court: Let us find out. You started out to ask a question and then you made a long speech. I don't know what you are driving at. I understand from the way you started, you wanted to know if this paper was in the possession of this witness at the time you made the demand on him for the delivery of all the papers of a similar nature.

Mr. Lindsey: That is correct, and the other two memoranda with respect to the other two conferences.

Mr. Freeman: I will let Mr. Alberts answer that. He heard the question.

771 The Witness: I was called at the end of an adverse examination, Mr. Fidler's, without notice. I was called about a quarter to five. I was at the adverse examination, and I was asked if I would testify without notice. Mr. Freeman answered for me that I would, and I told Mr. Lindsey I didn't have my files with me, I had a few papers, not all of them, and he said, "I don't want any files, go ahead." So I testified.

Mr. Lindsey: May your Honor please, the demand was to produce all of these records—

The Court: When was the demand made?

Mr. Lindsey: The demand was made about the 10th of April, to have them present when Mr. Johnson's deposition was taken on the 14th. These memoranda were not produced until, as I recall, April 30th, after Mr. Fidler and Mr. Wacker's depositions had been taken.

I want to know whether they were in your possession or counsel's possession at the time we took Mr. Johnson's deposition and at the time you took Mr. Wacker's and Mr. Fidler's deposition.

Mr. Freeman: They were certainly not in my possession, and I might say—

The Court: Never mind what you are going to say. Let us get the answer to this question. The question is a
772 very simple one. What is the answer?

The Witness: The files of Snap-On Tools Corpora-

tion were brought from Kenosha by Mr. Grover, who is sitting at that table.

The Court: Was this memorandum—

The Witness: They were not there, and at that time, after this adverse examination, I asked Mr. Grover about those memoranda, and he said that he would look into it, he thought he had all the files, and I searched those files and didn't find them. I told him he had better look into them, and he did look into them after that, and he advised me that Mr. Daniel, to whom these reports were going, had a desk file in his desk, and which he didn't know about at the time. Mr. Grover is a new man with Snap-On, and he had since found those memoranda and I think the originals are here in Court.

Mr. Lindsey: I would like to ask this question: Isn't it a fact, Mr. Alberts, that when Mr. Freeman took Mr. Fidler's deposition those memoranda were before Mr. Fidler and he used them in examining Mr. Fidler without submitting them to us?

The Court: You are mixed up. You have "Fidler" in there twice.

Mr. Lindsey: Mr. Freeman. Is that correct?

773 The Witness: I told Mr. Freeman about these memoranda there, but he said he didn't want to be bothered with them at that time.

Mr. Lindsey: But he did use them in examining Mr. Fidler?

The Witness: He wasn't using them to examine Mr. Fidler.

The Court: Have we discovered anything yet? Is your question answered?

Mr. Lindsey: I think I have discovered something. I will bring it out on cross-examination.

The Court: If you are satisfied, all right, let us go ahead.

Mr. Freeman: Would you please read my last question and the answer to that question?

(The last question propounded by Mr. Freeman and the witness' answer were read by the Reporter.)

Mr. Freeman: Q. I hand you the originals which have been given to me by Mr. Grover of Snap-On, and I will ask you to state whether that is your letter and the copy of the memorandum which went along with the covering letter of December 12th, 1940?

A. That is. I might state the pen corrections on the

memorandum were placed thereon before I mailed it to Mr. Daniel.

774 Mr. Freeman: We offer as Defendants' Exhibit No. 72 the memorandum of December 11, 1940, and as Defendants' Exhibit No. 72-A the covering letter of December 12, 1940.

(Said documents were thereupon respectively received in evidence by the Court and marked as Defendants' Exhibits Nos. 72 and 72-A.)

Mr. Freeman: Q. After having the telephone conversation with Mr. Hobbs what took place?

A. Well, when I got these two calls, Hobbs outlined what he had submitted, and he had given me, made the statement to me he thinks he has gone as far as he could with the other side, and that he didn't see any way of settling the case, and that he was just about washed up with it, or he is going to withdraw, or something to that effect.

The same day Mr. Lindsey called me and asked me whether or not Snap-On would be willing to pay any money to AMMCO. I replied with an emphatic No. He asked if Snap-On would be willing to cease selling the present type of wrench when their present commitments of something like 3,100 wrenches were filled, and after AMMCO would give Snap-On a release. He also asked me if Snap-On would be willing to admit the validity of any claims that may eventuate into a patent on any of the Zimmerman applications in the Interference, and any of the Zimmerman claims that may be involved in a patent that would subsequently be granted.

775 I replied that Snap-On undoubtedly would be willing to concede validity of those claims that were in Interference, and none other, because we didn't know to what extent they would become—that patent application, what the character of the claims would be at that time that they were ready for issuance, and that is as far as I could possibly recommend, a concession of validity to AMMCO for my client.

He then asked me if Snap-On would be willing to turn over to AMMCO the reserve fund held by Snap-On, and which was the fund of Precision Instrument Manufacturing Company. I replied by saying that when we got a proper release we would be willing to turn over that fund to Precision, and it was up to Precision to determine what they wanted to do with the fund, and Mr. Lindsey referred to the fund as a "litigation fund" over the telephone, and

I corrected him by saying it not only was a litigation fund but it was a fund to indemnify Snap-On in the event of a decree against it.

Q. And was there a proposal in the form of an agreement, that is, a proposed agreement submitted to you by Automotive?

776 A. On December 13th at the conference—

Q. And where was that conference held?

A. In Mr. Hobbs' office. They submitted a joint proposal and the front of it they labelled a "Tentative Draft of a Contract for Precision and Snap-On as Joint Parties to the Contract."

Q. Who was present at that conference?

A. Mr. Lindsey, Mr. Fuller, Mr. Hobbs and myself.

Q. Proceed.

A. I looked over the contract rather hurriedly. I noticed in there that they were including a second patent application filed by Larson that was not involved in Interference and had nothing to do with the Interference, that they asked for a concession of validity of all the claims, not only in the Zimmerman applications and whatever claim may eventuate into a patent, but also they asked for title to the Larson application in Interference, and Larson's second application which was not in Interference, and for a concession of validity, and all the claims and all of the four patent applications.

I at that time told Mr. Lindsey that this Tentative Draft went much farther than I had ever expected any proposition to go, and that thus far we were only talking about concession of priority, and this proposed draft or
777 tentative draft not only provided for concession of priority but the whole works. That is just the way I put it.

Q. And you mentioned something about a defense fund. Was that also requested?

A. I don't remember that at this time.

Oh, yes. In Paragraph 7 it says:

"Snap-On and or Precision agree to turn over to AMMCO upon execution of this agreement such monies as remain in a certain 'defense fund' (built up by agreement or understanding between Snap-On, Precision and/or Larson) after deducting from such fund all necessary and legitimate expenses which have heretofore properly accrued as against said fund."

I told them that was contrary to any expression he got from me over the telephone and, frankly, I was going to reserve opinion, I would take it up with Snap-On, but I think that he had better permit me to submit a tentative compromise contract. He said, "No," that if there is any compromise contract to be submitted he was the one that is going to be submitting it to me, and not myself to him.

Q. Who made that statement?

778 A. Mr. Lindsey. But I took this up with Snap-On Tools Corporation. In fact, I went there on December 17th, 1940 for the purpose of getting Snap-On's best proposition, and I told Mr. Hobbs that I was going there, that he ought to be there or at least Larson should be there because we couldn't submit anything without their approval, and he said he wouldn't be there, but he didn't see any reason why Larson couldn't sit in, and I went to Kenosha and I found Larson there, and I think he was there on some other matters, than the torque wrenches, that they were making at that time, and I discussed the matter fully with Mr. Daniel, and we later went in to see Mr. Johnson and told him what we arrived at, and told him what we found in the files of Snap-On, and that second application, we found from the conception records in the files of Snap-On was a joint contribution by Larson and Walraven, the chief engineer of Snap-On, and that under such circumstances we certainly would not permit Larson to assign that second application, and that we would have to forfeit that particular patent application, substituting a joint application in the name of Walraven and Larson, that that was the proper procedure; that I told Mr. Larson in view of the fact that certain of the contributions came from Snap-On, that title to that second patent application, after it was revealed as a joint application, should certainly
779 remain in Snap-On's hands, and he agreed to that.

He came back and on the same day I wrote to Davis, Lindsey, Smith and Shonts, and I told them I was in Kenosha, and I set forth the facts I ascertained there, and in fact information came to me from Mr. Daniel before that time that he thought that he remembered something about that second application being a joint application, and he thought it was joint, and I told him it wasn't, that when Larson submitted that report to me he told me it was his idea and he never said anything about Walraven, and that it was filed as a sole application.

Anyway, I went there to check that, and I found that to be substantially correct, and Mr. Larson agreed that the facts were substantially correct, and he didn't know the difference between a sole and a joint contribution; and he thought he contributed most of it and therefore it should have been his invention at that time, and it was so filed.

Q. Did you at this conference in Mr. Hobbs' office on December 13th, 1940 confer with Mr. Hobbs after Mr. Fidler and Mr. Lindsey had left, do you recall?

A. Well, a statement was made in that conference that I didn't quite understand, and it appeared to me that I-780 wasn't in on everything, and after they left I said to Mr. Hobbs, "What did Mr. Fidler mean by 'done away with'?"

And he said, "If the matter was settled everything would be done away with."

I said apparently he had some conversations that I wasn't in and he admitted he had lunch with him several times, or at least one time that I wasn't present, and I knew nothing about it, that they had some conference I knew nothing about, that he didn't report to me. I thought it was all right. I thought he should explain it to me.

He said, "Well, frankly, there is a tentative understanding submitted by Mr. Fidler that if the settlement goes through, or if a settlement goes through all the parties would have a bonfire of all the existing records and that would be the end of it," and that is what he told me at that time, and I said nothing further, and I went back to my office and went to Snap-On about four days after that and

I reported to Mr. Fidler under date of December 17th, 1940.

Q. I believe at the close last evening you had testified about having conferred with Snap-On on December 17, 1940, at Kenosha, and that thereafter you returned and wrote some letter?

A. That is right.

Q. Do you have the letter that you wrote to Mr. Fidler after your return from Kenosha?

A. I wrote a letter under date of December 17, 1940, of which a copy is in my file.

Mr. Lindsey: Do you wish the original, Mr. Freeman?

Mr. Freeman: I might want it to read from. It might be a little easier.

Mr. Lindsey: I think it would be a little clearer.

Mr. Freeman: I wonder if I might have Mr. Ooms read it instead of myself.

(Said letter of December 17, 1940, was thereupon read by Mr. Ooms.)

Mr. Freeman: We offer the letter of Alberts to Davis, Lindsey, Smith & Shonts, dated December 17, 1940, as 782 Defendants' Exhibit No. 73.

The Court: No objection, it may be admitted.

Mr. Lindsey: No objection.

(Said letter, so offered and received in evidence, was marked DEFENDANTS' EXHIBIT NO. 73.)

Mr. Freeman: And that letter was received in your office, Mr. Lindsey, on December 18th?

Mr. Lindsey: Undoubtedly.

Mr. Freeman: Well, it has the received stamp on it?

Mr. Lindsey: Yes.

Mr. Freeman: Q: And what next did you hear from Davis, Lindsey, Smith & Shonts, after you wrote the letter of December 17, 1940, Defendants' Exhibit 73?

The Witness: A: I received a letter under date of December 18, 1940, over the signature of Mr. Lindsey, coupled with a demand to produce a copy of transcript of the testimony taken on behalf of the party Larson. And also, that was accompanied, as a part thereof, by a notice of taking depositions in behalf of Zimmerman. And I have in my file letter of December 18, 1940, a copy of that demand and the notice of taking depositions of Thomas Raftery, who was the reporter doing the Larson deposition;

that is, the entire deposition on behalf of Larson,— 783 Herbert J. Schmid, who was an assistant in the Davis,

Lindsey, Smith & Shonts office; Mrs. Alice Larson, who was the wife of Kenneth R. Larson; Mrs. R. E. Fidler, opposing counsel; and Mrs. Addie Carlsen, who was the wife of Mr. Carlsen.

On that same day I sent a letter to Mr. Hobbs, enclosing a substitute power of attorney to him in the Interference proceeding. In that letter I stated that when he was first retained by Larson, and we first talked about his retainer, I was willing then to furnish him with a substitute power of attorney. He said at that time that it would not be necessary to send that right away, and when he wanted it he would request it. He didn't think that it would ever be needed, because he thought a settlement could be effected.

And I have a copy of my letter to Mr. Hobbs dated December 18, 1940, together with a copy of the substitute power of attorney, the demand in behalf of Zimmerman, and the notice of taking the depositions in behalf of Zimmerman.

Q. Do you recall whether you wrote Mr. Hobbs prior to or after you had received Mr. Lindsey's letter of December 18th?

784 A. No; Mr. Hobbs—I undoubtedly wrote Mr. Hobbs prior to that time. Whatever I had written, I testified to yesterday. I do not have any recollection of writing him after that date, wherein I enclosed a substitute power of attorney.

Q. And how was Mr. Lindsey's letter of December 18, 1940, delivered to you?

A. It was delivered by Mr. Schmid, who served me with the demand and the notice of taking of the Larson testimony in depositions which I just recited.

Q. And did you have a copy of Mr. Lindsey's letter of December 18th in your file?

A. I have the original in my file.

Mr. Freeman: We offer the letter of December 18th, on the letterhead of Davis, Lindsey, Smith & Shonts, as Defendants' Exhibit 74.

(Said document was thereupon received in evidence by the Court and marked as DEFENDANTS' EXHIBIT No. 74.)

Mr. Freeman: And I will read the copy of the letter; it is rather short.

(Letter, Defendants' Exhibit No. 74, read by Mr. Freeman.)

Mr. Freeman: Q. After receiving the letter of 785 December 18th, with the demand therein, what did you next receive from Mr. Lindsey?

The Witness: A. I might say that on the morning of December 19, 1940, Mr. Schmid brought to my office a letter in a sealed envelope addressed to me, and personally handed it to me. He asked my stenographer if he could see me, and he came into my office and he handed me that letter of December 19, 1940. The same day I received letters from Mr. Hobbs, or copies of letters.

Q. You say the same day you received a copy of a letter from Mr. Hobbs?

A. Yes.

Q. Do you have the date of the letter that you received from Mr. Hobbs?

A. His letter was dated December 18, 1940; that arrived in the mail the morning of December 19, 1940.

Q. And that was a letter dated December 18, 1940?

A. That is right.

Q. And addressed to Precision Instrument Company and Kenneth R. Larson?

A. That is right.

Q. Do you have the copy that you received?

A. I received the copy which was addressed to the Precision, and also an original letter addressed to me returning my substitute power of attorney.

Mr. Freeman: The copy of the letter from Mr. Hobbs to Mr. Alberts is already in evidence, as Defendants' Exhibit 67. I do not think the Court has had the contents of that letter; I will read it:

(Counsel reading letter, Defendants' Exhibit 67.)

The Witness: A. That copy was accompanied by this original letter, signed by Mr. Hobbs, addressed to me.

Mr. Freeman: And I now read the letter of transmittal from Mr. Hobbs to Mr. Alberts, with the letter that I have just read as Defendants' Exhibit 67:

(Counsel reading said letter.)

Mr. Freeman: And we offer as Defendants' Exhibit 75, the letter of Haight, Goldstein & Hobbs to Mr. Alberts, dated December 19, 1940.

(Said letter was thereupon received in evidence by the Court and marked as DEFENDANTS' EXHIBIT No. 75.)

Mr. Freeman: Q. What did you next hear from Mr. Lindsey, after the service of the notice and the demand for the production of certain papers and records?

The Witness: A. The next day I received a letter, to which I testified, served upon me personally by Mr. Schmid of Mr. Lindsey's office.

Q. That is the letter that was delivered to you personally, and not through your secretary or stenographer?

A. That is right.

Q. And do you have the original?

A. I do.

Mr. Freeman: This is a letter, your Honor, that is already in evidence as Defendants' Exhibit 68; and I think you have had the substance of that letter. I should like here, to just get the further continuity of this correspond-

ence,—it has been read, and I will re-read it, because it will give you the continuity.

(Counsel thereupon read Defendants' Exhibit 68.)

Mr. Freeman: Q. In the letter delivered to you personally there was an additional copy of the letter that I just read?

The Witness: A. There was.

Q. And what did you do with that letter?

A. I sent it to Snap-On Tools Corporation the same day that I received it, together with a forwarding letter which I believe is in evidence. And also enclosed with that letter my reply to Mr. Lindsey's letter of December 19th.

Q. And do you have the reply to Mr. Lindsey's letter of December 19th?

A. I do; I have a copy.

Mr. Freeman: Do you happen to have the original, Mr. Lindsey?

Mr. Lindsey: I think I have it right here; just a second:—

(Mr. Lindsey producing letter.)

Mr. Freeman: We now read the letter of Harry C. Alberts of December 19, 1940, to Davis, Lindsey, Smith & Shonts, in reply to Mr. Lindsey's letter of the same date, December 19th.

Mr. Ooms: Letter on the letterhead of Harry C. Alberts, to Davis, Lindsey, Smith & Shonts:

(Said letter was thereupon read by counsel.)

Mr. Freeman: And we offer the letter of Harry C. Alberts to Davis, Lindsey, Smith & Shonts, of December 19, 1940, as Defendants' Exhibit 76.

(Said letter was thereupon received in evidence by the Court and marked as DEFENDANTS' EXHIBIT No. 76.)

789 Q. Did you ever receive a reply from Mr. Lindsey, or Davis, Lindsey, Smith & Shonts to your letter of December 19, 1940?

A. I did not.

Q. What happened after December 19th then?

A. Well, on that same day, Mr. Carlsen and Mr. Larson came to my office and asked me what this thing was all about and they told me they had received a letter from Mr. Hobbs and he didn't understand how a lawyer could withdraw after they were retained or hired, I think he said.

I asked him if he had met Mr. Hobbs' financial requirements and he said they had and he wanted to know what this thing was all about, can a lawyer do such a thing to him.

I told him that I didn't understand the whole situation myself, things were happening so fast, especially it seemed to me that I did not see the entire picture myself, that as far as I am concerned I am going to let the matter go as it will go and have it proceed and I am going to protect the interests of Snap-On as they appear and I thought he should do the same thing.

I thought he should be willing at that time, in view of everything that had happened, to face the music. I told him in the end he would have to face it any way and that was the easiest time to do it because, to my mind, the entire thing looked like a collection case and I didn't think the District Attorney would use his offices to enable others to seek a civil remedy through a criminal element and I was firmly of the opinion that if he was my client, I would be willing to advise him to face the music and go through with this matter.

Q. That was on December 15th?

A. That is right. And then he said, "Well, what do you want us to do?" or something to that effect.

Q. "He," Larson?

A. Larson. I said, "I don't want you to do anything. I am merely telling you these things under the assumption if you were my client that is what I would recommend. Now, if you are not willing to face the music, I cannot do anything for you."

He again stated he would like to settle the matter, he didn't want to fight in view of everything that had happened and in view of the mistake he had made, in view of the perjury and all that had transpired up to that time.

I then told him if he felt that way about it, the best advice I could give him was to return to Mr. Hobbs and have him re-initiate settlement negotiations in his behalf but Snap-On Tools Corporation was not interested in any further settlement negotiations.

And at the same time he told me that he didn't know what to do about the subpoena of his wife and Mr. Carlsen said, "I don't know what to do about the subpoena of my wife."

I asked him what circumstances would prevent them from appearing on December 23d. Mr. Larson told me he had four children; that at least two of them were ill; that he had no help in the house, and his wife couldn't possibly leave the house.

Mr. Carlson told me his wife was running a beauty parlor and that was the most lucrative period of the year for her and she couldn't possibly leave the beauty parlor. They were quite concerned about these subpoenas.

I told them I would do one thing for them and that was to prepare affidavits for Mr. Carlson's wife to sign, and for Mr. Larson's wife to sign and I would go in before Judge Barnes and ask for a postponement of their appearance on the strength of those affidavits, and if he wanted to do that and had no other course open to him, after he had talked to Mr. Hobbs, to come back to my office and pick up the affidavits.

I prepared them and I have them in my file and I have the motion in my file already prepared but they did not return to my office that day, so, I did nothing further in that respect.

Mr. Lindsey: May I see those, Mr. Alberts?

Mr. Freeman: You bet you can.

(Papers handed to Mr. Lindsey.)

Mr. Freeman: We offer in evidence as Defendants' Exhibit 77, a copy of the notice served by Davis, Lindsey, Smith & Shents, with respect to the taking of the testimony of Rafferty, Schmid, Alice Larson, R. E. Fidler and Addie Carlson in Interference 77565.

It is all right with you if we use a copy?

Mr. Lindsey: No objection. I think we can have it understood, Mr. Freeman, that copies can go in the same as originals, unless there is an objection.

(Said document was thereupon received in evidence by the court and marked as DEFENDANTS' EXHIBIT No. 77.)

Mr. Freeman: Q. What followed after December 19th, when there was an exchange of Lindsey's letter to you and your letter to Mr. Lindsey and your conference with Larson and Carlson with respect to their wives testifying?

What happened next?

793 A. The next morning, or December 20th, I received a call from Mr. Hobbs who said he had had an

exchange of some harsh words with Mr. Lindsey over the telephone, that he had hung up on him, and that Mr. Lindsey had called him back and apologized and was willing to sit down again and would I go over with him.

Q. Over where?

A. To Mr. Lindsey's office.

Q. With whom?

A. With Mr. Hobbs. I told him that I personally didn't have any stomach to face Mr. Lindsey any further in view of his letter, that I wasn't going over there to be taken, and we ended our conversation in about that way.

Q. This was a telephone conversation?

A. That is right.

Q. What happened after that?

A. Mr. Hobbs came to my office about 1 p. m., I would say.

Q. On what date?

A. On the same day.

Q. December 20, 1940?

A. That is right.

Q. Proceed.

794 A. And let me know in no uncertain words that Mr. Lindsey and myself apparently were two hard men to get together and I shouldn't feel that way about the matter but in the interest of everybody, it would be my duty to go over with him.

I still told him I felt the same way about it and I frankly asked him if he thought that the proposition they submitted was a fair one and he replied by saying—he was quite irritated because I asked that question, he showed that very plainly—that that wasn't a fair question under the circumstances.

I had never before discussed with him the propositions of Mr. Lindsey and Mr. Fidler as to whether or not they were fair, the entire matter up to that time was negotiated on the basis of what could be done in view of the fact that Snap-On had a certain right under that existing contract with Larson and Larson wanted to do things that were, in a measure, contrary to the rights of Snap-On; that we were not going to be technical about that contract; that whatever was reasonable, I would recommend to Snap-On, and I was sure they would take my recommendation, but, so far, I didn't see anything that was reasonable; that I thought my written proposition on December 17th to Mr.

Davis' firm was fair, was further than I should have gone under the circumstances; that I was willing to do that because Larson was so anxious to settle and because he apparently was afraid of the consequences.

And we discussed the matter further and Mr. Hobbs stated squarely, in response to my question, if he thought the demands of Mr. Lindsey were fair, that, of course, they weren't fair but under the circumstances that was the best thing to do.

I replied by saying I didn't think that Larson, nor Snap-On could afford to do all of those things; that one thing I would flatly refuse was a concession of validity and an agreement not to infringe any claims that may be issued or may thereafter be issued in the Larson application and the two Zimmerman applications; that I did not propose to have Snap-On hamstrung by such an unnecessary restriction; that if and when they procured the patents they ought to be willing to stand on the merits of those patents and Snap-On should be entitled to defend it openly as other defendants would be.

Q. You are talking about claims over and above those involved in the Interference conference?

A. Yes, sir.

Q. Just so the record is straight: You were willing as counsel for Snap-On, to recommend an agreement on the part of Snap-On that it would recognize the validity of the claims involved in the Interference subject matter?

A. That is right. We were parties to that Interference and we knew what those claims covered and I was willing to go that far.

Q. Did you and Mr. Hobbs go over to Mr. Fidler's office that day, December 20th?

A. We did but before we went over, he said he understood Mr. Lindsey had a better proposition to offer me and that in all probability the opposing parties were now reconciled to some compromise; that I certainly would not hurt my clients by going over there.

And I accompanied him to the office of David, Lindsey, Smith & Shonts.

Q. Now, just tell us what happened at Mr. Fidler or Mr. Lindsey's office when you were there with Mr. Hobbs on December 20, 1940.

A. We arrived there and Mr. Hobbs asked the telephone

girl to announce his presence and my presence and we were taken into or sent into Mr. Lindsey's office.

We met with Mr. Lindsey there and Mr. Fidler. We again exchanged the usual greetings and Mr. Lindsey 797 said we had better go into another room, in Mr. Davis' office, which was at the end of that corridor in their offices.

We went in there. We were all seated. Mr. Lindsey sat behind the desk in that office and told me that I shouldn't have interpreted his letters the way I undoubtedly had interpreted them; I shouldn't have read into them everything that I apparently had read into that letter; that he did not intend that that letter should be taken the way I apparently had taken the letter, and that he didn't intend also for me to read between the lines.

I made no comment and then he proceeded to tell us a few jokes and after that we started discussing the contract again, and he had a proposal in written form, of which I have here a copy.

Q. Have you completed your answer, Mr. Alberts?

A. No, I have not. I am looking for the copy of that contract.

Well, I have here that contract which was submitted to me by Mr. Lindsey and it is now in the same condition it was then with the exception I put a pen and ink note at the top of that contract about the fact that the conference was held with Fidler and Lindsey on December 20, 1940;

that this contract was not signed; that it included the 798 patent application on the Springtail feature I had previously written down be assigned by Snap-On to Automotive.

I looked over the contract then and I made up my mind, after reading it; that it wasn't much different than the contract submitted December 13, 1940, of which I also have a copy, except he had separated Precision and Larson from Snap-On and that he had substantially the same agreements for each but they were separate agreements, and that was a request I made in my letter of December 17, 1940.

Q. Were there modifications made then over and above the proposed agreement you have just referred to in Mr. Lindsey's office on December 20th?

A. We then discussed it and they made modifications and it was getting late in the afternoon, they had inserts made on separate paper—I have one of the inserts here.

that was made in their office of which they gave me a copy—and it described definitely what the limit of the number of wrenches that Precision could make and which Larson—which Snap-On could sell, and we finally agreed, after many telephone calls by Mr. Fidler to Mr. Wacker—he would go out of the room and say he was calling Mr.

Wacker—and we finally agreed that six thousand 799 wrenches could be manufactured by Precision and sold by Snap-On under the terms of this agreement; that thereafter Snap-On would pay ten per cent of the net selling price if they had on hand orders in excess of six thousand at that time.

I told him things were happening fast, that the orders were coming in from the government and from the aircraft industry, that I didn't know at that moment just what the number of orders would be on hand nor did I know or could I know what was in the mail by their prospective customers—from their prospective customers.

So, Mr. Fidler finally came in and said he had talked with Mr. Wacker and that six thousand was the limit and for Fidler not to call him any more.

Q. Then what did you do?

A. Then I still didn't like the concession that they had in the contract of conceding validity and agreeing not to infringe any claims allowed or hereafter allowed in any of the three patent applications.

Mr. Hobbs stated Mr. Larson was willing to assign the patent application in Interference and they exacted the same concessions in our contract as to that validity and infringement as they did in the Precision contract.

800 I told them I still couldn't see my way clear to accept such a concession. I didn't see any need for it. If they had meritorious patents issued to them, they had no reason to exact that concession, it was an unreasonable one.

But Mr. Fidler then said, "You heard what Mr. Wacker told me, not to call him any more, and we are not going to call him any more. Now, that is the contract."

Q. So, what did you do then?

A. I said, "Well"—they said it had to be settled and settled fast and they would like to settle it that day.

I said the only thing I could do was call Snap-On. And Mr. Fidler took me to one of their private offices in the suite and gave me access to call Snap-On Tools Corporation.

That was quite late in the afternoon, I would say it was about four o'clock at least. And I called Snap-On Tools Corporation and asked for Mr. Johnson and he was out, or at least he wasn't in his office.

I asked for Mr. Daniel and he answered the telephone. I told him what had transpired, that I was at Mr. Lindsey's office, and we were again talking about a contract and the only thing I could see was accomplished is the limit of six thousand wrenches they could hereafter sell of the type 801 that they were then buying from Precision; that they had taken out of this contract the requirement to assign this second Larson application; that in all other respects I didn't see any difference between the contract in its final form and their final proposition and the previously submitted contracts about which I had written them and which resulted from Mr. Lindsey's letter of December 19th and my reply on the same day and Mr. Hobbs' withdrawal.

And I told him, "I presume you have received them this morning."

He said, "I have received all those letters, yes."

I said, "Now, it is a question of taking this or standing the consequence of what they may mean by their letters."

"You have them before you. You know as much about what they have in mind as I do now. I don't know what you want to do about it but it is a question of one or the other."

And Mr. Daniel said he would certainly be placed in a difficult position, that Mr. Johnson was not here and he didn't know whether he ought to take the responsibility but from what had transpired and some of the letters before him, he said, "I don't see there is much to do but sign 802 the contract. Right or wrong, they could bring suit against Snap-On, and right or wrong we don't want to get into a suit."

He finally said, "Well, I will take the responsibility for you oking that contract. I don't see you can do any more and I don't see Mr. Johnson could do any more, even if he was here, and I will try to explain the situation to him when he is in the office."

So, I went back to the conference room and told them Mr. Johnson wasn't there; that I had talked to Mr. Daniel, who was assistant secretary, and handled the patent matters; that I don't think the by-laws of Snap-On—I didn't know—that the assistant secretary could sign contracts, I

didn't think he could, but I really didn't know what Mr. Daniel's authority was, but he said, subject to, of course, Mr. Johnson's final word, that he would recommend to Mr. Johnson to sign the contract in view of everything that has been transpiring and the fact I apparently was at my end and he certainly didn't like the whole situation but didn't want to go through any more of it.

Q. And the agreement made as of the 20th day of December, 1940, Defendants' Exhibit 3, between Snap-On and AMMCO was then executed a few days later, is that correct?

803 A. They gave me a copy and I sent it on to Snap-On. I called Mr. Daniel and told him the contract is in the mail, to please get in touch with Mr. Johnson immediately, they wanted to finish this thing up before Christmas, and as long as we had gone this far, and he has tentatively okehed it, I think it ought to be done promptly, and he said he would take care of it.

Q. Do you recall when the exchange of signed copies of the agreement was made?

A. I got in touch with Mr. Hobbs and he got in touch with me and when we had the copy signed by our respective clients and the assignment by Snap-On to Precision of the Larson patent Interference, he had an assignment from Precision to Automotive signed, we agreed we would both go over there and deliver the contracts.

Q. When was that delivery made?

A. That delivery was made in the early afternoon of December 24, 1940.

The day before Christmas we went to the office of Davis, Lindsey, Smith & Shonts. A Christmas party was in progress and Mr. Fidler was called out. It took a little while before he came out. He seemed to be in high
804 spirits there and we told him we had the contracts, did he have his.

I think also I might say we called in advance to be sure he would have his client's signature.

Mr. Freeman: That is all. You may cross-examine.

805

Cross-Examination by Mr. Lindsey.

Q. Mr. Alberts, as I understand your testimony, on November 28th, 1940, after you had heard Mr. Thomas's story in Mr. Fidler's office, Mr. Larson flatly confessed to

you that he and several of his witnesses had perjured themselves in the Interference testimony, is that correct?

A. It is.

Q. Now, I will hand you a letter to me of December 19, 1940, which is Defendants' Exhibit No. 76.

May your Honor please, I would like to hand your Honor a photostatic copy of that because I am going to refer to it for sometime.

You will note that in the second paragraph of Page 1 of this letter you first refer to a conference which you had with me and others on December 13, 1940, and in the second full paragraph, the second sentence, you say—

A. Is that page 2?

Q. Page 2.

"The only evidence leading to any wrongdoing thus far was given to Mr. Johnson and myself at your office on November 28th, 1940."

Was that statement true or false?

806 A. That is true, in the sense in which I incorporated that sentence in that paragraph, yes.

Q. Was that statement alone false, without any further explanation?

A. Oh, I was—that statement is not false.

Q. Well, you had been given other evidence leading to wrongdoing, had you not?

A. Not by you or anybody in AMMCO's behalf. That is what I was talking about.

Q. But you say:

"The only evidence leading to any wrongdoing thus far was given to Mr. Johnson and myself at your office."

Now, you don't limit that to what Mr. Fidler or Mr. Wacker or Mr. Johnson said to you?

A. The letter was addressed to you. I certainly was limiting it to whatever you gave me. I wasn't telling you what was told to me in confidence between an attorney and client.

Q. What you were doing in making this statement that "The only evidence leading to any wrongdoing thus far was given to Mr. Johnson and myself at your office on November 28th, 1940," was to mislead me and Mr. Fidler into believing that Mr. Larson had not confessed to you, isn't that the truth?

A. That is not the truth.

Q. Why did you make this statement?

A. I was predicating that on the threats that you addressed to me, that your threats were only based upon that information which you had given to me. Your threats were not based on what I had learned through Mr. Larson.

Q. Now, you further say, and I read the next sentence: "That evidence was given by an individual who has already admitted that he has committed wrongdoings against your client, himself, and Larson."

That was Mr. Thomasma, wasn't it?

A. Mr. George Thomasma.

Q. "The only charge of wrongdoing"—and I am continuing to read your own language, Mr. Alberts—

"The only charge of wrongdoing thus far"—thus far—is at the instance of the self-confessed wrongdoer."

A. That is right.

Q. That was Thomasma?

A. That is right.

808 Mr. Freeman: "Thus far" was only in there once, wasn't it?

Mr. Lindsey: I think the record will show that I was emphasizing "thus far."

Q. Now, the only charge of wrongdoing was at the instance of Thomasma at that time?

A. Construed in the light that I was replying to your letter, that was the only charge that your firm or anybody in your behalf or on behalf of AMMCO made known to me. I wasn't telling you what I had learned from others.

Q. You had charged Larson, had you not, when you returned to your office?

A. That was between Larson and myself. I wasn't telling you.

Q. Will you please answer the question, Mr. Alberts? Did you charge Larson when you returned to your office?

A. I so testified. I certainly did.

Q. There was another charge, though, we didn't make, isn't that correct?

A. You are misconstruing that entire reply. Your threats were based upon what you knew, and my reply was based upon what you knew and upon what you conveyed to me, and not what I learned through confidence. I wasn't handing over Mr. Larson to you to do what you
809 wished to do when you had already threatened me on meager evidence. What would you have done to Lar-

son if I had told you everything Larson told me? That was the very spirit in which that reply was given, yes.

Q. Now then, on the next page of your letter to me, towards the bottom, you say:

"I certainly do not regard Mr. Thomasma as an individual of such repute that his uncorroborated words are deserving of being accepted hook, line and sinker."

Would you please look at the letter so that there will be no question that I am quoting you properly, Mr. Alberts?

A. I remember that letter. I will never forget that letter.

Q. Now, that was not true, was it, at the time you wrote it?

A. It certainly was true insofar as what you knew about the matter, on the strength of your accusations to me, yes.

Q. Then you mean it is true, that from what Thomasma had told us we were not in a position to accept his uncorroborated words hook, line and sinker, is that correct?

A. That is correct, insofar as you were directing your accusations against me and Snap-On now. I wasn't speaking for Mr. Larson.

Q. Now, in the middle of the last page of your letter, Mr. Alberts, you say:

"He"—meaning Larson—"is still entitled to counsel and I do not expect you will deny that the Bill of Rights and the Constitution of the United States afford him that privilege even if everything Thomasma has said should be taken as the gospel truth (which is quite a swallow for anyone)."

A. I said that.

Q. It would be quite a swallow for anyone, would it not?

A. Not the way you presented it to me, or Mr. Fidler. It was presented to me on the basis that your firm was satisfied and Mr. Wacker was satisfied—

Q. It was quite a swallow for you after you heard Thomasma's story, was it not?

A. No, sir. Your letter was quite a swallow to me.

Q. Now, let us just wait a minute, Mr. Alberts, and see if we can get along a little faster. Was this Thomasma's story quite a swallow for you?

A. No, I was convinced at that meeting—

Q. If you will just wait until I finish my question, please. I will give you plenty of time to answer, Mr. Alberts.

A. All right.

Q. At the time that Mr. Thomasma had completed his story before anything was said by Mr. Fidler about these alleged threats, wasn't his story quite a swallow for you?

A. No. I would say it wasn't quite a swallow for me, but it certainly was quite a swallow for anybody to take on the basis that you used that to threaten me and Snap-On Tools Corporation. That is precisely what I meant. I wasn't talking for Larson.

Q. You mean then it wasn't quite a swallow?

A. Not as far as Larson is concerned, no.

Q. Was it quite a swallow for anyone—you say Thomasma's story was quite a swallow for anyone?

A. No, I wouldn't say so. It was very definite, and Mr. Thomasma was very definite. He seemed to have full charge of all his faculties, not only that day, but in this Court, he knew what he was saying and he was pretty smart in what he was saying. He knew everything, he knew 812 more than I knew at the time the deposition was taken, and he knew such details that I didn't even know and which he certainly could not have known had he not been familiar with all the facts and known the facts and known what Larson had testified to.

Q. Then the sum and substance of your testimony, as I gather, with respect to your remark that it was quite a swallow for anyone, is that you didn't believe that when you wrote this letter?

A. I certainly did not intend to convey that information at all. I was saying precisely this, that on the basis of what Thomasma had testified to in Mr. Fidler's office you certainly, certainly had no basis upon which to accuse me or Snap-On Tools Corporation.

Q. Now, Mr. Alberts, let us get down to the question here of this letter in which you say that if everything, Thomasma had said was taken as the gospel truth, that it would be quite a swallow. Now, is it quite a swallow to you or isn't it?

A. As far as Larson is concerned, no, it wasn't quite a swallow at all.

Q. Then you deliberately lied in this letter when you—

A. I didn't lie in that letter. Take your letter to 813 me and take my reply and you get the picture as far as I was concerned and Snap-On Tools was concerned. I wasn't—

Q. I will be very glad to get to that letter in a minute.

Going back to the second paragraph on the second page, Mr. Alberts, you say:

"The only charge of wrongdoing thus far is at the instance of the self-confessed wrongdoer who doubtless is under even more duress than imposed upon the witnesses during the deposition and now being cast upon the writer and Snap-On Tools Corporation."

What basis of fact did you have for asserting that we were undoubtedly exerting duress against Thomasma?

A. Well, he had testified to his work in the Automotive plant, that he was what was then regarded around the plant as a key man, he had access to everything in the plant day or night, that he had available to himself equipment that he could take out of the plant. He admitted at that meeting when he was asked questions that there was some difficulty with Mr. Wacker, that he, Mr. Wacker, had discharged him, that he had taken some tools out of the plant

and taken them to Mr. Larson to show him what Auto-814 motive was doing, and to that extent that was sufficient

for me to know that what he had done was certainly enough for you to demand anything that you wanted of him, and that is precisely what I meant by that statement.

Q. You don't believe that today, do you?

A. I certainly do believe that today.

Q. You have heard the testimony of Mr. Thomasma and Mr. Wacker?

A. I did.

Q. And you think they have perjured themselves in that regard?

A. No, I don't think they have perjured themselves, but I don't think the entire story came out in this court room.

Mr. Freeman: Will you use the "pre-trial deposition of Mr. Wacker" to make sure you are referring to something that has not taken place in the Court here?

Mr. Lindsey: Yes.

Q. When did you first learn, Mr. Alberts, that Mr. Thomasma had removed any tools from the plant of Automotive without authorization?

A. That was in the examination of Mr. George Thomasma in Mr. Fidler's office.

-815 Q. Mr. Thomasma made that statement?

A. He had made a statement that he had taken some of the wrenches out and showed them to Mr. Larson. Now, I don't remember at this time whether he said he had

given a wrench to Mr. Larson that was never returned or that he had loaned him a wrench and he did return it. I won't go that far, but at least I will say definitely that he admitted he removed wrenches and other tools out of that plant without authority. He may have testified that he returned some of them. I don't know.

Q. Did he admit that he stole those tools?

A. No, he didn't use the word "steal." He said "without authority," that he had no requisitions for those tools.

Q. And that statement alone convinced you that we had used duress against Thomasma?

A. Plus the fact that he admitted that he was discharged by Mr. Wacker, that is right, for those things.

Q. You know he was discharged by Mr. Wacker because Thomasma had helped organize the Precision Company while in the employ of Mr. Wacker's company, do you not?

A. I didn't get that.

816 Q. I say, you know that Mr. Thomasma was discharged by Mr. Wacker because Mr. Thomasma had helped organize the Precision Company while Mr. Thomasma was still an employee of Automotive, did you not?

A. Mr. Thomasma testified on adverse examination that he did not admit that to Mr. Wacker at the time, so Mr. Wacker discharged him because he had taken tools out of the plant without authority, without a requisition.

Q. Now, you have referred a number of times to my threatening letter, and I will hand you a photostat, and one to the Court. I will give you the original, Mr. Alberts.

Now, Mr. Alberts, at the time I wrote this letter to you you had informed us that you were sending associate power of attorney to Mr. Hobbs in the Larson Interference?

A. Substitute power of attorney.

Q. Substitute, in behalf of Larson, had you not?

A. That is right. I sent you a copy of my letter to Mr. Hobbs under date of December 18th, and a copy of the substitute power of attorney, that is right.

Q. And Mr. Hobbs had told you when he entered the situation on behalf of Larson and Precision that he would only represent them in connection with the settlement 817 and not the Interference, did he not?

A. He may have told that to Mr. Larson, but he had no reason to tell me that, no.

Q. Well, he told you and Mr. Fidler and me at the con-

ference which we had with Mr. Hobbs on December 13th, 1940—

A. I don't think—

Q. May I finish—

A. Excuse me.

Q. —that if the Interference could not be settled he would not undertake the prosecution of the Application, did he not?

A. That was never discussed at that conference.

Q. He wrote you a letter stating that that had been discussed at that conference, did he not?

A. He wrote me a letter on December 18th, and I would like to refer to the letter. I don't remember it in the letter, but he may have—

Q. Well, you can refer to it.

A. I think that letter was offered here.

Q. That is the letter from Mr.—

Mr. Freeman: That is Defendants' Exhibit No. 67, the letter from Mr. Hobbs to Precision Instrument Manufacturing Company.

Mr. Lindsey: I am going right along. I will come back to it later. I can't put my hand on it. I will be glad to have you consider that later, Mr. Alberts.

Q. Now, at the time I wrote this letter to you of December 19th, Exhibit No. 68, the settlement negotiations had broken down, had they not?

A. I didn't know they did. I sent you a compromise offer of December 17th, 1940. I heard nothing more from it. You didn't tell me that you wouldn't accept that proposition, you just wrote that letter. That was your reply to my compromise proposition.

Q. Now, I hand you this letter which you have referred to, of December 18th, 1940, from Mr. Hobbs to the Precision Company. There is a mention of breakdown of negotiations in that letter, isn't that correct?

A. That letter came within an hour of the time your letter came to me. I didn't know—I wouldn't say it came before or after your letter. It came within a very short time of each other. I didn't know anything about it. Nothing was conveyed to me that there was a breakdown, except Mr. Hobbs' letter of December 18th, 1940 to Precision and Kenneth Larson, which arrived at my office on December 19th, and your letter to me, coming by messenger, very much together, I would say. I was very much impressed by that fact at the time.

Q. This letter to Precision, Exhibit 67, was received by you before you wrote this letter to me of December 19th, 1940, Exhibit No. 76, was it not?

A. I had both letters before me, yes.

Q. So that you did know when you wrote this letter to me of December 19th that negotiations had fallen down, isn't that correct?

A. That is right, as to that question, but you previously asked me whether I knew at the time that I received your letter whether negotiations had fallen down. My answer is still No, because I remember getting two letters—the copy from Mr. Hobbs and your letter—very close to each other, and I won't say now that yours came before or after, but they were within a short time of each other.

Q. And you suspected some skulduggery between Mr. Hobbs and myself, isn't that what you are inferring?

A. I suspect nothing except that the pressure was pretty large on me at that time, and very emphatic and accentuated, I would say.

Q. Well now, at the time that I wrote you my letter 820 of December 19th and it was delivered to you, the Reporter whom you had engaged to take the testimony in the Interference had not transcribed all of the testimony, isn't that correct?

A. That is correct. Mr. Hobbs advised him, your letter so states there, I think—well, I know that there was an understanding between us that pending settlement, the Reporter should not go any further.

Q. Well now, as I recall—I forget the dates, I have got to get them from Mr. Fidler—but, as I recall, the testimony of Larson, who was the last witness, closed on November 14th, 1940, isn't that correct, Mr. Alberts?

A. Right after we returned from Judge Barnes' Court and received his decision, yes.

Q. And there was nothing about negotiations whatsoever for another month, isn't that correct, Mr. Alberts?

A. No, I wouldn't say another month. November 20th I told Mr. Fidler at his office that in view of what he has told me and in view of the fact that Mr. Wacker, he stated, would force the matter out in the open and the axe would pierce wherever it would fall, at that conference he so stated to me, that I would like for him to hold the whole matter in abeyance for one week until Mr. Johnson 821 could come in, and Mr. Thomasma. From that time on I gave him to believe that if Mr. Johnson and I had

the opportunity of hearing Mr. Thomasma that we would try to settle the matter, that we didn't want to have any thing to do with it.

Q. Well now, did you tell the Reporter on November 20th, or November 28th, not to report any of his untranscribed notes?

A. I did not. He was so scared he wouldn't listen to me. I had Mr. Hobbs call him. I said, "You are attorney for Larson, you had better call him."

Q. Why was he scared of you?

A. Because he had received advances from me right along in excess of what his bill was, and he had delayed the testimony. I wrote him a letter, without any request on the part of Mr. Fidler—I returned from the east, the transcript was not in my office. I wrote him a letter, sent a copy to Mr. Fidler and asked him why it wasn't there, I wanted it, and Mr. Fidler called me up and said he appreciated very much the fact that I was in a hurry as well as himself to get that transcript. So I was pressing him very hard, I was getting very impatient with him. He gave me no really good excuse, and he was quite irritated with me, and he was afraid of me, and from what Mr. Fidler had told him and told me, he had already asked Mr. Fidler for twenty dollars, which I knew nothing about, and that was contrary to my understanding with Mr. Fidler, and I told Mr. Fidler that that was new to me, and he would get that twenty dollars from my office, and he so did.

Mr. Lindsey: May the Court please, I think much of these answers are not responsive, but I am inclined to leave the witness ramble on and tell his story rather than object, so that there won't be any further assertions by my honorable brother on the other side that we are suppressing anything.

Q. But the fact remains that the Reporter had not transcribed a large portion of the testimony up to the time that I wrote this letter to you of December 19, 1940, isn't that correct?

A. That involves an interpretation of the word "large." I wouldn't say it was a large portion. Mr. Larson's testimony had been transcribed, as I remember, but—

Q. Was Carlson's?

A. No.

Q. Was Whitaker's?

823 A. No. Larson's testimony was the most important. Mr. Fidler asked for that, and I told the reporter to get that first.

Q. You heard Mr. Larson testify here on March 27th under the Discovery Rule that both Carlsen and Whitaker had perjured themselves, did you not?

A. I don't recall he mentioned their names, but he said practically all the witnesses perjured themselves, and then on cross-examination he admitted that Ladendorf and Blake's testimony was true.

Q. If you can just answer the question we will get along a lot better. I just asked about Larson and Whitaker.

A. I couldn't say yes or no.

Q. You don't recall that?

A. I recall him saying all of the witnesses' testimony was also false.

Q. You have a rather remarkable memory, have you not, Mr. Alberts? As I remember, you testified yesterday that when you sent Mr. Larson and Mr. Carlsen over to Mr. Hobbs, or rather gave him the name of some lawyers, you wrote the names you thought on a card about three inches by five—

824 A. Three by five, card I carry, and in answer to your question I will say I have a very retentive memory. Too much so for my own good.

Q. But you don't remember that testimony of Mr. Larson's that both Mr. Carlsen and Mr. Whitaker had perjured themselves?

A. I don't remember him specifying the names of witnesses. I remember him saying all the witnesses on his behalf falsified their testimony. If you give me the transcript I will be glad to look at it.

Q. And it is also a fact, isn't it, when I wrote you my letter of December 19th, 1940, that Zimmerman's time for taking depositions was running?

A. Yes, and I had asked for extensions and you could have gotten one very freely from me, several of them, if you wanted them.

Q. And you were in hopes, by delaying the transcription of the testimony and writing these numerous letters, that we would be required to ask for an extension of time to take testimony, and probably for several extensions in order that your clients Precision and Snap-On, or Snap-On

and its supplier Precision could continue to make this wrench which was clearly covered by the claims in 825 issue, notwithstanding that you knew that Larson's testimony was based on perjured testimony?

A. That is untrue.

Q. Now, you do know that you did instruct witnesses not to answer at times during the taking of those depositions?

A. I instructed them not to answer one question, and that was who the stockholders of Precision was. We had already gone five days and the expense of that record was getting too much out of hand, and I permitted the witness to answer as to who the directors were, and when you went into the stockholders I told Mr. Fidler I didn't know where this was going to end, and I would have to instruct the witnesses not to answer, and he said he would certify the question. I told him to serve notice and I would be glad to—

Q. And that was the real question, was it, about stockholders?

A. That was the beginning, or, I should say, that was about the time my patience was becoming exhausted with his fishing expedition about matters not germane to the Interference as I knew them then.

Q. And, as I recall, you testified yesterday that the question which was certified to Judge Barnes, that is, the 826 question upon which you had instructed the witness not to answer, had to do with who were the stockholders of Precision?

A. That is my memory now. I would be glad to look it up, if you want to know.

Q. You have a very retentive memory, have you, Mr. Alberts?

A. I think so, yes.

Q. Now, if counsel wish to check this with me—I show you the motion, or a copy, entitled, in this court, and in the Interference No. 77565, "Motion For Order Directing Witness to Answer Questions propounded on Cross-Examination," and this question, as set forth in your own memorandum—incidentally, that is your signature, is it not?

A. It is.

Q. —has to do entirely, has it not, to the construction of claims? Do you see anything in the motion or in the

memorandum about any question having to do with stock holders?

I wonder if you will admit that they are proper copies?

Mr. Ooms: I am sure they are, Mr. Lindsey, if you 827 tendered them. We have a copy here we would like to compare in the recess.

The Witness: This particular certification involved an interpretation of claims, but I had reference to and most likely had misstated the actual facts, that there was a question came up in the cross-examination as to whether or not Larson or Carlsen was to state who the stockholders were, and I refused to have them answer the question. That question, however, was not certified. That refreshes my memory, yes.

Mr. Lindsey: Q. Now, you had employed this reporter, had you not?

A. I did.

Q. Now, I referred to the obligations in this letter of December 19th, 1940. Aren't the only two obligations that I am calling upon you to perform in this letter these: First, to have the testimony transcribed and, second, to either remain attorney for Larson or properly appoint another attorney in your stead upon whom we could serve papers?

A. Why should I appoint an attorney for Larson?

Q. I am asking you if that letter does not require you or ask you to fulfil only those two obligations?

828 Well, if you want to take the letter to pieces, and I don't think any letter can be so construed, that is specifically what you asked for, but taking the entire tenor of the letter and all of the other threats involved, that was not what you were asking for.

Q. What other obligation do I recite in that letter or call upon you to perform, Mr. Alberts?

A. You called upon me, in the way I construed that letter in the light of what transpired prior to that, to sign the proposition that you submitted, and you were not listening to my counter proposition.

Q. Did I ask you in this letter of December 19th or demand that you sign that proposition?

A. Well, that is the way I construe it, and I would say that, reading the entire letter, that is what you were after, yes.

Q. And you also construed, inasmuch as I would not agree to your proposition, as set forth in a letter of yours

of December 17th, I was taking advantage of you, is that correct?

A. No, sir. You were trying to force the issue between Snap-On and Larson, and using what you had ascertained was a wrongdoing of Larson against not only Larson but Snap-On and myself, implicating me, as though I 829 was a party, having knowledge of what transpired there during the deposition.

Q. You deny that you had any such knowledge?

A. I not only deny it, but I refer to Mr. Fidler's statement and to the witnesses' statement, who are involved here, Mr. Carlson and Mr. Larsen, and Mr. Hobbs, who asked him that question, and he related to me over the telephone that they had definitely cleared me from any knowledge.

Q. What accusations was I making against you in this letter of December 19th, 1940, except asking you to observe and perform your obligations as attorney of record in the Interference?

A. You told me that I employed the reporter, that the reporter had not—

Q. Well, you had employed the reporter, had you not?

A. Just let me answer the question. That I had—the Reporter had not transcribed the testimony correctly, and that was my obligation, and that was not true. I had nothing to do with that reporter. It was the first time I ever employed him. I knew no more about him than you did.

830 Q. Mr. Alberts, do you think as an attorney—you are an attorney, are you not?

A. I certainly am.

Q. You are admitted to practice in the State of Illinois?

A. I am.

Q. Are you a member of any Bar Association, Patent Law Associations?

A. I am an ex-member of all of those Associations.

Q. Ex-member?

A. Yes.

Q. Are you a member of the American Bar Association?

A. I am an ex-member of the American Bar Association.

Q. And of the Patent Section, I suppose, of the American Bar Association?

A. An ex-member.

Q. Now, you know, do you not, that it is the duty of a lawyer who employs a notary and the notary does not tran-

scribe the testimony, it is the duty of that lawyer to use his best efforts rather than to appoint or attempt to appoint someone as his associate when he has already been informed that the associate will not act in that capacity? You know that, Mr. Alberts, just as well as I do?

A. I know that, and that testimony was accurately 831 transcribed.

Q. I am talking about the untranscribed testimony. Wasn't that your duty to continue to see that that was transcribed?

A. Up to that date you agree that Mr. Hobbs was given to understand that he was not to go any further.

Q. Well now—

A. And I was not representing Larson at that time. How could I make a demand on that reporter.

Q. You weren't representing Larson when, Mr. Alberts?

A. At the time I received your letter.

Q. You weren't representing him on December 19th?

A. I certainly was not.

Q. Were you representing him up to that date?

A. No, I wasn't. December 3rd I wrote your office a letter, that I withdrew. November 28th I said that I was withdrawing, and I was there on behalf of Snap-On and Snap-On alone. I think that was very clear and plain.

Q. Now, Mr. Alberts, you didn't formally withdraw ever from that Interference, did you, as counsel for Larson?

A. When I prepared a substitute power of attorney, that is the procedure in the Patent Office for withdrawing, yes, and I had no—

832 Q. You didn't file that, did you?

A. I couldn't file that.

Q. And you hadn't attempted to withdraw up to that time, which was December 18th, isn't that correct?

A. Well, we were in negotiations—

Q. No. I am asking you if you attempted to withdraw. Let's see if we can't—

A. Directly to the Patent Office, or in any other way?

Q. Of course, the only way you can withdraw—

A. That is not the only way, that is not the only way I know. I have never known an attorney who has formally asked the Patent Office to withdraw. Their procedure is entirely different than the procedure in a Court.

Q. Did you formally appoint anybody else in your stead or as your associate?

A. Mr. Hobbs.

Q. Prior to December 18th?

A. We had an understanding that he would get the substitute power of attorney.

Mr. Lindsey: May your Honor please, I will ask the witness to answer the question. That is an easy question, and I want to know whether this man ever filed in the Patent Office any paper withdrawing or appointing 833 anybody else in his stead to represent the party Larson in the Interference prior to December 18th, 1940.

A. I never filed such a paper in the Patent Office, no.

Q. So you had not formally withdrawn, isn't that correct?

A. I wouldn't so construe it. When I give a substitute power of attorney, that is the procedure among patent lawyers, and in the Patent Office the attorney who receives the power usually files it.

Q. Now, Mr. Alberts, you are willing to say on the stand here that you fully believed that you had withdrawn as the attorney for Larson in the Interference on November 28th, isn't that correct, 1940?

A. Yes. That was my intention and that was the way I construed by statements to Mr. Fidler, and in my letter of December 3rd, that I was no longer representing Larson, he was no longer consulting me, and as far as I was concerned he had another lawyer, and my hands were clear of Larson.

Q. Do you recall any correspondence and documents in evidence where, after November 28th, you still referred to yourself as attorney for Larson?

A. On December 19th I was not ready to leave Larson standing alone without an attorney and—

Q. You were still his attorney then, isn't that right?

834 A. On that day I was his attorney; until they went back to Mr. Hobbs, and he again took up the negotiations, that I didn't know that he would ever see him after that.

Q. Just for an hour or two at your will?

A. No, I wouldn't say an hour or two. I will claim that I was his attorney for that day.

Q. Did he reappoint you as his attorney for that day?

A. No, I took that appointment voluntarily. I wasn't ready to let him stand alone.

Q. Now, let us consider this letter of mine of the 19th a little further. What part of this letter is a direct accusation or charge against you?

A. "In the second place, we do not believe that you can divest yourself of all responsibility in this matter. You are still the attorney of record. Snap-On still has legal title to the Larson Application in Interference."

Q. Let me interrupt. So far that is true, isn't it?

A. No, that is not true.

Q. What part isn't true?

A. Where you make reference to me as the attorney for Larson.

"You took the deposition on behalf of Larson. You instructed witnesses at opportune times—inopportune times for Automotive—not to answer certain pertinent and searching questions asked on behalf of Automotive."

That was a threat.

Q. Those questions were searching, as you found out now, were they not?

A. They were searching, way beyond the scope of direct examination, yes.

Q. But they were searching, now, in your mind, in view of Larson's confession to you that he had committed perjury, are they not?

A. Yes, they were searching. They were searching then and they are searching now, as I remember that.

Q. I will proceed now. What—

A. "You employed the reporter."

Q. That is true, isn't it?

A. That is true, but let us not quibble about a few words. Let us take the entire expression. I can't interpret a letter just by one word, nor a contract by one word. I have to construe the entire document.

Q. I would like to know what part is true and what isn't, as we go along.

836 A. I can't—

Q. Answer the question. I can't argue with you.

A. "Part of the transcript is not reported correctly—up to that, that is not true—or fully. The reporter delayed in transcribing part of the record."

That is an inference that I had something to do with it.

"You must recognize that a large part of the testimony

taken on behalf of Snap-On and Larson is, to put it mildly, not the whole truth. Mr. Johnson of Snap-On has been fully advised of the situation so far as it has developed, and I assure you that there are further developments still to be revealed."

I had never seen those developments or heard of them.

"You and Mr. Johnson should, if you do not, realize that you are holding up the issuance of the Zimmermann patent without the slightest justification."

That is untrue.

837 "I do not consider your quarrels with Precision as being any justification."

That is untrue. Our participation in that Interference was not a quarrel with Precision. It was a quarrel with Automotive.

"Automotive is not interested in that matter."

I don't know whether that fits at all.

"You cannot shift your responsibility to Mr. Hobbs."

I was not trying to shift my responsibility to Mr. Hobbs. I never asked Mr. Hobbs to represent me or my conduct or defend my conduct in that Interference.

"We in Automotive do not propose to permit your or your client Snap-On to divest yourselves of responsibility."

That is not true. We were not trying to divest ourselves of responsibility.

"We simply refuse to permit Automotive to be the goat."

That is untrue, as far as Snap-On is concerned and as far as I am concerned.

"You have asked Mr. Hobbs to notify Mr. Fidler to direct all future notices to Mr. Hobbs rather to you."

838 I sent Mr. Hobbs a substitute power of attorney. I don't interpret that as the equivalent of sending that substitute power to Mr. Hobbs. It was understood at the very beginning he could have it any time he thought he would want it.

Q. But he said he didn't want it, hadn't he?

A. Not up to that time.

Q. All right. Proceed.

A. Not at the time I received the return of it. I didn't know of it anyway.

"We intend to continue to direct all notices to you until you have formally withdrawn as attorney."

Q. You were finding fault with us there for directing communications to you?

A. I certainly was. You should have sent me a notice as attorney for Snap-On, being assignee of record, and corresponding notices to Mr. Hobbs as attorney for Mr. Larson.

Q. Even though he wasn't of record in the Patent Office?

A. That wouldn't make any difference.

Q. You know that wouldn't be recognized in the Patent Office, Mr. Alberts. Don't try to deceive the Court.

839 A. He had a substitute power of attorney and could file it at any time.

Don't try to deceive the Court.

A. I am not trying to deceive the Court. I am trying to tell the truth.

Q. Isn't it a fact that the Patent Office won't recognize the signature of a lawyer who is not of record in a case any more than this Court will in a suit, isn't that right?

A. They will hold the document and ask for a power of attorney, and ask when it will be forwarded. They will not return the document.

Q. You think we should send it to somebody that won't act as attorney, and not to you?

A. It wouldn't do any harm to send us both notices. That is the way to do it.

840 Q. Now, Mr. Alberts, have you the copy of my letter to you of December 19th, Exhibit 76, the one that we have been talking about, or, rather, your letter to me, I should have said, of December 19, 1940. I think you have the original right here.

A. I don't think I finished with this other letter.

Q. I don't know what the last question was now; I think you had finished, however.

The Court: He was down pretty nearly through that letter. You were asking him what his conclusion was about the statements contained in your letter. He had gone over the first two pages.

Mr. Lindsey: Q. Is there anything else you would like to add?

The Witness: A. I would like to read through the letter; that is the question I was asked. I don't think I finished this letter.

The Court: No, you did not.

841 The Witness: We were talking about "We intend to continue to direct all notices to you until you have formally withdrawn as attorney; and even then, we do

not propose to permit you to evade any obligation which you have up to that date incurred."

My answer to that is, I discharged my obligations up to that date; and the inference was to the contrary.

With respect to transcribing Larson's record, I think I say the following in my dealings with Mr. Hobbs: "Mr. Fidler did advise Mr. Hobbs that those portions of the testimony which had not been transcribed as of December 2, 1940, could be held up, because it appears that settlement was very likely." That is correct. "I understand that Mr. Hobbs so informed you." That is true. "Of course, it was understood by everybody that, when the settlement fell through, the transcript would be promptly completed."

Q. Was that true?

A. That was true. And my answer to that is that I would see that whatever I could do about it, rushing it through to completion, would be done by myself. There was no opportunity; the settlement was effected the next day.

"That is your definite obligation, and we are looking only to you to perform that obligation." Within the 842 time allowed, I had performed that obligation.

"I am enclosing an extra copy of this letter, which I would appreciate if you would send to Mr. Johnson of Snap-On, so that Mr. Johnson would know exactly what Mr. Wacker's position is, as we wish to avoid any misunderstanding between them." I received a copy of your letter, which was also signed by you, and did forward it to Snap-On Tools Corporation, with a forwarding letter and with a copy of my reply to this letter addressed to you. And that occurred on December 19, 1940,—it was placed in the mail.

Q. Have you finished your answer, Mr. Alberts?

A. I have.

Q. Now going back to the second page for just a moment; I say in the letter to you, "I do not consider your quarrels with Precision as being any justification." That is for holding up the issuance of the Zimmerman patent. What quarrels was I referring to there?

A. Where is that?

Q. In the middle of page 2; what quarrels was I referring to?

A. We had no quarrels with Precision. You were referring to the fact that Mr. Larson perjured himself, and you

grave us knowledge of that fact. When we discovered 843 that we promptly expressed ourselves to the effect that from there on we would only be interested in carrying on any further intercommunications on behalf of Snap-On, and that I was Snap-On's attorney and Snap-On's attorney alone. I do not see any justification for that.

Q. Well, now, you had no quarrels; but you did have a difference of opinion about settling this Interference, did you not?

A. We never expressed a difference of opinion between ourselves. I told Mr. Hobbs that anything within reason would be recommended to Snap-On by myself; and if I recommended it, I am sure they would go through with it.

Q. Didn't Mr. Hobbs recommend that Snap-On accept the proposition, that Precision and Larson were willing to entertain it, but you were not willing to agree to it; isn't that a fact, Mr. Alberts?

A. That is not a fact. My entire quarrel at that time was whether Snap-On should concede validity of all of the claims then allowed, or that may hereafter be allowed, and also agree not to infringe. I never, and I so told Mr. Fidler, permitted a client of mine to subscribe to any such restriction; and I did not see any reason for it then, because we were not involved. And that was the primary 207 quarrel at that time.

844 Q. Now I will ask you to examine the letter which you wrote to Mr. Fidler dated December 17th, the letter being Defendants' Exhibit 73?

A. That is right.

Q. And I will ask you if that is not a long letter about a different proposition that had been submitted, and that that letter was received by me the day before I wrote you my letter of December 19th, about which you have been testifying.

A. Repeat the question.

(Question read by the reporter.)

A. There is no difference of opinion between Snap-On and Precision. I said everything in there was subject to the approval of Precision, of Larson. We had no difference of opinion; that was Snap-On's proposition, solely.

Q. Well, now, Larson had filed an application as the sole inventor, has he not, through you?

A. Filed two applications through me.

Q. Well, I am speaking about the one that is referred to in this letter, Mr. Alberts.

A. The second Larson Application.

Q. All right, the second Application, then; is that clear?

A. That is right.

845 Q. Can you answer the question now?

A. Will you repeat the question?

(Question read by the reporter.)

The Witness: A. Your question is not entirely clear to me.

Mr. Lindsey: Q. I think there was another question; let me save time and repeat the question, if I may: Larson had filed the second Larson Application in his own name, had he not?

A. That is right.

Q. And that was another mistake, was it not?

A. That proved to be a mistake, from what knowledge I subsequently learned, yes.

Q. And then you proposed to re-file that application, either as a sole application on behalf of Walraven or a joint application in the name of Larson and Walraven; is that correct?

A. Not entirely; I proposed to re-file it as a joint application, never considered it as a sole application of either one of them.

Q. And you were considering that proposition, were you not?

A. No; Precision through Larson had already acknowledged that my recital of facts were correct, and he was 846 in agreement with those. That was never a quarrel between Precision and Larson on the one hand and Snap-On on the other hand.

Q. Now will you please refer to the third page of your letter to me, of December 19, 1940, Exhibit 76; and I will read the portion as I wish to—

A. May I have the original, please?

The Court: Here is a copy of it.

The Witness: All right.

Mr. Lindsey: Q. You say, "I certainly do not regard Mr. Thomas as an individual of such repute that his uncorroborated words are deserving of being accepted hook, line and sinker." And then you go on, you say this: "Definitely present corroboration of the competent type, with sufficient competency to outweigh Larson and his cor-

robulators, and then your client is entitled to an award of priority. Beyond that I do not care to discuss any phase of the case for the present.

Now, Mr. Alberts, isn't it a fact that there you are telling us to go ahead and take testimony on behalf of Zimmerman, to establish Zimmerman's dates, notwithstanding that you knew that the Larson testimony was perjured?

A. Please repeat that question.

847 The Court: I gave you the wrong letter, didn't I?

This is the letter you are talking about; are there two letters of December 19th?

The Witness: A. There is only one, but I didn't find the place he was reading from.

Mr. Lindsey: Q. Here at the bottom of page 2. Read the question.

(Question read by the reporter.)

The Witness: A. I was merely telling you that on the basis of what I heard and what you knew, bearing in mind that what Larson had said to me was confidential; you had no right to make those accusations.

Q. You felt no obligation, as an attorney, to instruct your clients to concede priority of the invention; is that correct?

A. I did so instruct my client; and I offered a concession of priority in behalf of Snap-On. I told you that Snap-On would recommend that to Larson, and that without question Larson would do what Snap-On wanted. But after your letter threatening me and Snap-On Tools Corporation, as far as we were concerned, and ignoring the confidence, the knowledge I procured through a confidential relationship,

I had every right to disregard what Mr. Larson told 848 me; because he actually was telling me that at the moment I was withdrawing, or just prior to the time I withdrew as his attorney. And whatever he told me had no bearing upon what I was saying on behalf or in answer to what you were accusing me of.

I still repeat that that is a justifiable position, a very honorable position for an attorney to take with respect to his client. I had no duty as a lawyer to disclose or reveal a wrongdoing on the part of my client.

Q. Now Mr. Alberts, you are familiar with Patent Office practice, and the rules of practice, are you not?

A. I formerly was an examiner in the Patent Office.

Q. You know this, do you not: That the rules spe-

cifically and unqualifiedly provide that an interfering party; that is, an applicant whose application is in Interference may at any time terminate the Interference by filing in the Patent Office a concession of priority, with the consent of his assignee if any; and the opposing party has nothing to say about it and can do nothing about it; isn't that a correct statement now?

A. That is a correct statement; and I recommended that procedure to Mr. Hobbs when everything went blank.

Q. And you did not follow through on that?

849 A. I was not Mr. Larson's attorney, and I could not file a concession of priority on behalf of the assignee without Larson's consent, especially in view of the fact it was really his invention and not ours; we merely had it as security. That would be a travesty on justice, to deprive Larson of whatever rights he may have thought he had at the time. We were in no position to do that, especially in view of our contract of September 28, 1938. I would like to have done that, and would have done that had I continued to represent Mr. Larson.

Q. And you did not continue to represent Mr. Larson?

A. I did not.

Q. After what date?

A. After November 28, 1940.

Q. Now, that is aside from any formal withdrawal, any formal paper filed in the Patent Office; is that correct?

A. I am not quibbling about words; I wrote Mr. Fidler. I told Mr. Larson to get another attorney, and he did. And as far as I am concerned, from there on I was not his attorney; he had another attorney.

Q. Well, now I will hand you Defendants' Exhibit 69; and I will ask you to look at the last paragraph, on page 1.

Now, that exhibit is a letter from you to Mr. Johnson, 850 of Snap-On, and is dated December 19, 1940; is that right?

A. That is right.

Q. And in the last paragraph you say—now observe carefully, if you will ~~not~~ follow it, so there won't be any question—"I stand on record in the Patent Office as attorney for Larson as well as your firm. I cannot very well at this moment withdraw and leave Larson to the unmerciful tactics of AMMCO and their attorneys." So you were attorney at that time?

A. I previously testified that I will take the responsi-

bility for being his attorney on the day of December 19, 1940, when Mr. Hobbs returned the substitute power to me and in a letter to his client expressed the fact that he was withdrawing as their attorney. And I was not leaving him alone; that is true. But I did not get the consent of Mr. Larson on that day to file a concession. I told him that I could be of assistance to him, if he was willing to face the music on that day; and he was not willing to do it.

Q. You verified the Third Amended Petition of Snap-On?

A. I did.

Q. Did you not?

A. I did.

851 Q. And do you recall that you alleged that in order to procure Larson's release from Exhibit 5 agreement from Snap-On, Automotive threatened Snap-On and you with the crime of possession and concealing knowledge of the commission of perjury by Larson and others on his behalf?

Q. Now, when did we accuse you of that, on what dates?

A. Well, your letter of December 19, 1940 to me contains a revitation of a series of threats. That is the way that read to me; that is the way I construed it then, and that is the way I construe it now. On the basis of that letter alone, I felt justified in making that allegation.

But besides that, besides that, on November 20, 1940, Mr. Fidler, after stating all the facts to me and after asserting that he had the evidence on Larson, that if this matter was not settled he would have to force the matter out in the open, and the ax could pierce wherever it fell, those were his words. Again, on November 28, 1940, in Mr. Fidler's office, in the presence of Mr. Wacker, Mr. Allen, Mr. Johnson, and myself, before Mr. Thomasina was called in, the charge was made that Snap-On is Precision and Precision is Snap-On.

That was a threat. And that it had transpired that 852 we had knowledge of that perjury. That was a direct threat to myself and also to Snap-On. And then Mr. Fidler went on to say Snap-On's hands are not entirely clean in this matter either. And that was a direct threat to Snap-On Tools Corporation; and if Snap-On Tools Corporation's hands were not clean, my hands were not clean either. What they knew I knew; and what I knew, they knew. That was another threat.

Q. And what Larson knew, you knew?

A. No, definitely not.

Q. Go ahead.

A. When I went down to Snap-On Tools Corporation on November 29, 1940 to report to the executives and their associates in that conference there I relished the entire matter from the inception of their relationship with Snap-On; and I then repeated the remarks which I just have given, about the threats that have been made. That was a direct threat to me; it was a direct threat to Mr. Johnson; it was a threat to their entire organization, or those responsible for it.

Q. When was the next threat made?

A. There were threats, direct and indirect, in our negotiations. The entire conduct of the negotiations were such that they were conducted, with the knowledge on the S53 part of everybody concerned,—and I mean everybody—that perjury was present; it was a distasteful case; and all of the negotiations were predicated on that fact, and that fact alone. It was no secret to anybody.

Q. Do you state that to be a fact?

A. I state that to be a fact; there was no secret about that. Then when negotiations blew up,—

Q. Haven't you answered the question yet?

A. You asked me what threats; I am giving you the series of threats.

Q. All right; that is all I want. I don't care whom you told them to; I want to know what the threats were.

A. Then, when negotiations blew up several times,—and I might say that Mr. Hobbs' contacts with you were more frequent than mine; it appeared that way, anyway—

Q. You are sure of that, are you?

A. I am not sure of it.

Q. How many contacts did you have with Mr. Hobbs?

A. I don't know; I had two contacts with you.

Q. How many did you have with Mr. Hobbs?

A. Over the telephone, as well as in person?

Q. Personal.

A. In person?

Q. Yes.

854. A. Excluding the telephone calls?

Q. Yes.

A. Well, I would say at least three.—

Q. And how many telephone calls?

A. Wait a minute; excuse me: I would rather recite the times, I cannot count them in my mind. Mr. Hobbs was in my office the first time negotiations blew up; and we discussed the matter. He was in my office December 19th. I was in his office on December 13th. I was with him in your office on December 20th. That makes four contacts; and I had another contact with him in my office, when he tried to get me to go over, and I finally did go over.

Q. How many personal contacts do you think we had with Mr. Hobbs?

A. I am not going to even make a conjecture on that; I don't know.

Q. You were just guessing, then, when you said we had more contacts.

A. I meant personal and telephone.

Q. How many telephone contacts did you have with Mr. Hobbs?

A. I would say at least five of them.

Q. Now, in this letter of yours to Snap-On, of December 19th, in which you enclosed a copy of mine, you say, "I consider his—" that is my letter—"as another example of the type of blackmail which Thomasma no doubt is confronted with." Do you have any basis for saying that we were blackmailing Thomasma; are you in the habit of using those words?

A. No, I am not in the habit of using them; and I am not in the habit of receiving the kind of letters you sent me.

Q. What is your justification for saying we were blackmailing Thomasma?

A. When I was called in to Mr. Fidler's office on November 28th, he was asked questions relating to his position with Automotive. He testified that he was regarded as a key man in the Automotive plant; he had free run of the plant, could go wherever he wished, whenever he wished, day and night; that he had contact with Mr. Zimmerman, the engineer, and had a right to make suggestions to him; and that that was part of his work.

In other words, that in a small measure he had done some developing work in the plant. And that he had the right to sell equipment for Automotive Machinery Co. He stated that he had sold some to Larson, that he took Larson into the plant at night; that he delivered 856 merchandise to Larson at night.

He also testified that he had taken out tools, with

the authority and free runs of the plant that he had, which he should not have taken out; and that Mr. Wacker called him to account in that regard, and also called him into account in regard to his alleged connection with Precision.

He at that time denied that he had any connection with Precision, to Mr. Wacker. I am just repeating his testimony. That Mr. Wacker then and there summarily dismissed him, because he had taken tools out of the plant, and he so testified he had given at least one of those tools to Mr. Larson.

With that information, I felt the fact that he had at least one-third of the stock of the Precision Instrument Manufacturing Company, and was placed in a position where he was rendering that stock worthless, that there must have been, there could not otherwise have been anything but the most unusual pressure on him, and they had the goods on him. That was my conclusion, and on the strength of that, and what I heard there, I feel that I had every right to advise my client about that.

That, too, I consider a privileged communication. That was enough for me.

857 Q. Now, then, your position is that Wacker or Mr. Fidler or I held this over Thomasma's head and made him come in with his story; is that the blackmail?

A. I was communicating that to my client, in confidence.

Q. I am asking you what this blackmail was.

A. Your letter to me, that was my blackmail; that is what I was referring to.

Q. Let us keep to the blackmail that you were referring to here, the blackmail that Thomasma is confronted with. Who committed that blackmail; let us bring it out, get it out in the open. Your counsel said we are going to put everything on the table; put it on the table.

A. Let me read that statement; I think I have answered your question.

Q. Well, you have said enough to answer it; but I don't think you have answered it.

A. That is where we disagree.

Q. Well, who committed the blackmail?

A. I said I considered this letter, and I am referring to your letter of December 19, 1940, as the type of blackmail which Thomasma no doubt is confronted with. And I was making a comparison, and that is true.

858 Q. All right; you don't want to answer. Let me have it. Now, the Larson patent suit issued on a certain feature, did it not; that is, the claims were limited to a certain feature—let me restate it: The patent that issued on the Larson Application in the Interference contains claims limited to a certain feature; isn't that correct?

Mr. Freeman: I thought we were not going to go into that.

Mr. Lindsey: I don't want to analyze the claims; I just want to find out what is Thomasma's and what is Larson's; I am not going to ask any interpretation of the claims; just one question. —

Q. Can you answer the question?

The Witness: A. I want to answer that question, and I want to qualify that question; because there are two stages of prosecution.

Q. I am speaking about the claims for the patent issue.

A. My answer to that is no; you are suing him on the face of the claim, after the application went in; and that is not limited to a specific feature.

Q. All right; claims filed in the original are limited:

A. That is precisely true.

Q. Who, in your judgment, was the inventor of that feature, Thomasma or Larson?

859 Mr. Freeman: I don't see where that makes any difference at all, as to who is the inventor.

Mr. Lindsey: Just a moment; this is cross-examination.

The Witness: A. That is asking for a conclusion, but I am willing to give it.

Mr. Lindsey: Q. Yes.

A. Summing up all of the testimony given in this case, both in the adverse examinations and the testimony that was given by Thomasma on November 28, 1940, in the presence of Mr. Johnson and myself, Mr. Wacker, Mr. Allen, the testimony that was given on this stand by both of the adverse parties there, I would say that the best, the very most liberal interpretation could be that that should have been a joint application of Larson and Thomasma.

Q. Now, as I understand your testimony that you have given, you always considered that there was no relationship between Snap-On and Precision, other than that Precision was supplying wrenches to Snap-On under a contract; is that correct?

A. That is correct; and I would rather state it this way:

There was only a relationship of commerce; that is about what describes that relationship the best way I could put it.

Q. And Snap-On had nothing to do with the international organization, or the stock control, or anything of that sort, of Precision; is that correct?

A. Definitely not.

Q. At no time?

A. At no time.

Q. You had nothing to do with anything of that sort personally, did you?

A. That is true.

Q. And that condition has existed even during the Interference and the settlement, and for months after that; and to this day; is that correct?

A. That is precisely correct.

Q. There is no question in your mind about that?

A. None whatsoever.

Q. Now, did you ever blame any one for having spoiled Larson's chances for not prevailing in the Interference; that is, other than Mr. Fidler and myself?

A. I never blamed any one for spoiling his chances of surviving that Interference; he had no right to survive in that Interference.

Q. Did you ever criticize any one for taking any part in that Interference, and that it resulted adversely to Larson, so far as the Interference was concerned?

861 A. You mean to the extent of a concession of priority?

Q. Or otherwise; did you ever criticize anybody's participation, other than Mr. Fidler's and mine, as to this compounding of a felony?

A. I have never criticized anybody, other than Automotive and their agents and attorneys.

Q. Did you ever accuse any one of cutting off their nose to spite their face, with respect to Thomasma having made this affidavit?

A. No, sir.

Q. You never said anything of that sort?

A. No, sir.

Q. You never wrote anybody that?

A. Not to my knowledge.

Q. And you never criticized any one connected with

Precision, or otherwise, for giving us information leading to Thomasma's affidavit; is that correct?

A. I never have.

Q. You are sure of that?

A. I am positive of that. Wherever the truth is, it should be revealed; that has been my position, and shall be my position.

Q. Did you ever tell or write any one, after the '862 agreements were entered into,—I am speaking of the agreements involved in this litigation—that you learned from Thomasma that Larson was the inventor, and not Thomasma, of the major portion of the wrench in question?

A. Repeat that question.

(Question read by the reporter.)

A. I would have to limit that as to time; on November 28, 1940, Thomasma made the statement, after reciting the facts, that Larson did most of the work on the wrench; that that portion of the wrench which involved the placing of the indicator beyond the point of pivotal movement of the beam, thereby translating the movement or flex of the beam to a point where it could be accurately registered and thus give better performance,—I at that time construed that Thomasma admitted that that was Larson's invention. But that is not how the claims read in the issued patent.

Q. Then you never told any one that?

A. I may have, yes; reported that much. As of the information I received on November 28, 1940 from Thomasma. But from what he has since said in this court; and on adverse examination, and in his affidavit, I would certainly change that conclusion.

Q. Now, Mr. Alberts, I show you a letter, the original dated January 31, 1941, from Harry C. Alberts to David M. Krichiver; is that your letter?

A. That is.

Q. And you admit you sent that letter?

A. I do admit.

Mr. Lindsey: I would like to read this letter, may your Honor please, for the record. Will you do that, Mr. Smith, read this for me?

Mr. Smith: Letter addressed on the stationery of Harry C. Alberts, bearing the signature of Harry C. Alberts, dated January 31, 1941, addressed to David M. Krichiver, Esquire, Attorney-at-law, 139 North Clark Street, Chicago,

Illinois: "Re Precision Instrument Manufacturing Company—File 11595—"

(Said letter was thereupon read by Mr. Smith.)

Mr. Freeman: Do you happen to have the letters of April 27, 1940, July 15, 1940, December 10, 1940, January 9, 1941, January 29, 1941?

Mr. Lindsey: Well, I have carbons of them.

Mr. Freeman: May we have them?

The Witness: Am I under questioning now, regarding that letter?

864 Mr. Lindsey: Q. No, I asked you if it was your letter.

A. Yes, it was.

865 Q. Now, what was the occasion of this letter which you admit was rather sharp, do you not?

A. Well, I am not going to put any construction on your words.

Q. What was the occasion of writing this letter?

A. The purpose of that letter was precisely what I have testified to a moment ago, that as far as up to that time, January 31, 1941, which was prior to the date that Thomasma testified on adverse, which was prior to the time he testified in this court, and the only knowledge I had was the knowledge he had given on November 28, 1940 in response to the questions of Mr. Fidler, and then he acknowledged that the greater part of the work on that wrench was done by Larson; that Larson's idea was to place the indicator in the handle end of the wrench, put an extension on the flexible beam to translate the flex of the beam to such an extent that a more accurate performance could be acquired in taking measurements or viewing the indicator to register those measurements; that that part of the wrench was his invention.

And I still say that that part of the wrench should be issued to Larson on his application in the Interference but that application through Thomasma's efforts went, and
866 I say unjustifiably went, to Automotive.

That was the purpose behind that letter and I still repeat what was said in that letter.

Q. What was the occasion of the letter, I am asking you.

A. Larson came down to me and showed me copies of these letters, or perhaps, they were originals. I don't remember now. They were most likely originals.

Q. What was in the letters that occasioned this, if you recall?

Mr. Freeman: You have the carbon.

Mr. Lindsey: I want to test his recollection.

Mr. Freeman: All right.

The Witness: A. He was accusing Larson of everything that possibly a major stockholder and director and managing director of a corporation could be accused of and it appeared from that letter, from those letters, that he was trying to subject them to such pressure that they would pay him more than the stock was worth.

And he conveyed to me the fact that under those circumstances that he was being hindered in the production of wrenches, that Snap-On and his contract could not possibly be fulfilled if they were going to have that internal difficulty with a five-share stockholder, would I be of any help?

And I called Daniel and told him about it and I might say prior to that time we were advised a good many times they were having this trouble with Krichiver and Krichiver called me on one occasion before the settlement and tried to come over to see me and I made an appointment which he never kept and I called Mr. Daniel and asked him whether or not I ought to help Precision try to straighten out that particular difficulty which Larson says was interfering with his ability to perform under the contract and their production was suffering.

Every time they got going Krichiver would come over and order a stockholders' meeting, a special meeting, order this and that, he couldn't cope with it, and would I help.

They said whatever I could do, I should do, and, to that extent, the letter is very expressive on the point it was written entirely to protect such rights as Snap-On has under the terms of the then existing agreement.

Mr. Lindsey: I think after that I have almost forgotten the question but I think the question was, what was in these letters Mr. Krichiver wrote that called for that letter of yours.

The Court: Give him the letter. We are not going to stay here forever.

Mr. Lindsey: Q. Were there any accusations in any of those letters?

A. Yes, in the letter of July 15, 1941, Mr. Krichiver says this:

"I think it would be to your best interest to see me at which time I can outline to you my future course of action."

That, coupled with what they told me had been going on there, was plenty.

The letter of December 10, 1940, makes the general accusation:

"if any meeting was held."

I am only reading part of the letter.

"and that until such time as he receives a copy of the minutes of the meeting, if any was held, he does hereby object to each and everyone of the acts of the board of directors and he will so continue to object to each and everyone of the acts and deeds of the board of directors which supposedly took place on November 16, 1940."

869 Q. That was because he wasn't given notice of that meeting, wasn't it?

A. I don't know. He didn't so state in there and he must have had knowledge of it somewhere or other. He must have received notice, otherwise he wouldn't have written about that meeting.

Here he is telling that what the by-laws of the corporation require about annual meetings, stockholders' meetings, tells them about the law of the State of Illinois providing notice of date and place shall be given at least ten days prior to such meeting; as yet he had not received such notice, which should be called for January 13, 1941.

Then he ends up by saying this:

"I am hereby making demand upon you to arrange for said meeting, and advise me of the date thereof. If I do not hear from you within the next few days, I shall take such action as is available to me."

Then on January 29, 1941, he says:

"As a stockholder of the Precision Instrument Manufacturing Company, I am hereby making demand upon you to turn into the corporation for cancellation the 260 shares of stock you now hold in the Precision Instrument Manufacturing Company on the grounds that there is no consideration given by you for these shares."

Now, he is writing to Kenneth Larson and he wants Larson to turn in his shares of stock.

"Should you fail to turn in your stock for cancellation within the next three days, I shall file suit against you on behalf of myself and the other stockholders similarly

situated and the corporation to enjoin you from acting for and on behalf of the corporation and to have the court cancel your holdings."

Then on January 29, 1941, he again wrote, Walter Carlsen:

"I have this day made a demand upon Kenneth Larson to turn into the corporation for cancellation the 260 shares of stock which he holds on the grounds that said stock was issued to him without consideration."

"I am hereby requesting you as secretary and treasurer of the corporation to request Mr. Larson to turn in his stock for cancellation on the same grounds."

"In the event Mr. Larson's shares of stock are turned in for transfer on the books of the corporation, you are hereby notified to refuse such request on the grounds that said 871 stock had been issued without consideration and are therefore null and void, or be personally liable for those shares."

"I have advised Mr. Larson that if he fails to turn in his stock within the next three days I will institute a suit against him enjoining the transfer of the shares he holds and asking the cancellation of the shares issued to him."

"I am still awaiting notice of the annual meeting of shareholders, which according to the by-laws of this corporation should have been held on the second Monday of January. If I do not hear from you within the next few days concerning a meeting of the shareholders, I shall write the other stockholders and arrange a meeting as provided for in the by-laws and in the statutes of the State of Illinois."

Those were the letters Mr. Larson brought to me and, I might add, they were not charged for services for that letter; Snap-On Tools Corporation paid for it.

Mr. Lindsey: I will offer Mr. Alberts' letter to Mr. Krichiver of January 31, 1941 as Plaintiff's Exhibit 20.

Mr. Freeman: I object to this. They have no materiality in the case to the issue. They were only put in to test this man's memory and I think he has done a good job of proving he does have retentive memory. They are not material to this case.

The Court: I don't think they are material but I don't know. Let them go in.

(Said document, so offered and received in evidence, was marked PLAINTIFF'S EXHIBIT No. 20.)

Mr. Lindsey: And I will offer the copies of the letters which Mr. Alberts referred to and which are identified in his letter of January 31st as Plaintiff's Exhibit 21.

Mr. Freeman: Are you putting them all in collectively as 21?

Mr. Lindsey: Collectively, yes.

(Said documents, were thereupon received in evidence by the court and marked as PLAINTIFF'S COLLECTIVE EXHIBIT No. 21.)

Mr. Lindsey: Q. Now, I believe you said you recommended that Larson concede priority and Snap-On was willing to do that, is that correct?

A. That is right.

Q. Did you make that proposition to us?

873 A. To whom?

Q. To us, Mr. Fidler and me.

A. It is in my letter answering yours. I certainly did.

Q. But you attached quite a few conditions to that, did you not?

A. You never even considered that. I did attach some—

Q. I am asking you if you didn't attach some conditions to this letter you referred to and that is the letter of December 17, 1940, is it not, Defendants' Exhibit 73?

A. That involved something more than the concession of priority. I can't answer that yes or no. I offered a concession of priority. That is all you were entitled to and all you should have asked for.

Mr. Lindsey: If your Honor please, I think this witness of taking an awful lot of time.

Q. Did you ever submit a written concession of priority?

A. I had no power to do that. When I learned the facts on November 28th, I withdrew for Larson. I couldn't do that. All I could do was consent to it. I offered to consent to it and Mr. Johnson confirmed that.

Q. Now, in your memorandum of December 18, 1940, covering the November 28 conference, you said:

874 "Up to the time of submission of this agreement, That was on December 13th.

"the question was always put to me as to whether or not we would permit Larson to concede priority of the Zimmerman Counts in Interference."

Do you recall that statement?

A. I would like to read it and see what other statements are in there. Where were you reading?

Q. I am trying to find it. I will have to check that up or come back to it.

Now, wasn't that all we had been demanding was a concession of priority?

A. No, up to ~~that time~~ I did not get any special demands.

I offered to see you got—that Automotive got a concession of priority and the reply was Wacker wouldn't be satisfied with a mere concession of priority, he spent \$5,000 investigating these people, and he wants some substantial settlement, and he wants it promptly. That is all that was said.

Q. Didn't you write me in your letter of December 19, 1940, Defendants' Exhibit 79, on Page 1, after you refer to the December 13, 1940 conference:

"The only concession demand made known to me and 875 Snap-On Tools Corporation up to the time of that conference was a concession of priority of the claims in Interference."

Don't you say that in the letter?

A. Yes, sir, and that means just what I stated. I offered the concession and there was no definite counter-demand.

Q. "The only concession demand made known to me." Who made known to you?

A. I made it known to you.

Q. You say, "The only concession made known to me." Who made it to you?

A. I made it to you. You never replied to it.

Q. I don't understand the language:

"The only concession demand made known to me." You were writing the letter. Who made that concession demand to you, Harry C. Alberts?

A. My answer is still the same. I offered a concession priority. That was the only demand known to me except that general reply, Wacker wants a certain settlement and he wants it promptly, and I still say that was the only concession demand known to me then.

Q. I now refer to your memorandum of December 876-18, 1940 which covers this conference in Mr. Fidler's room on November 28, 1940.

A. No, it covers more than that.

Q. It refers to it, doesn't it?

A. Yes, sir.

Q. You are not going to quibble with words. Let's get along, Mr. Alberts.

"They presented a tentative draft of an agreement which involved AMMCO, Snap-On, Precision and Larson as parties. Up to the time of submission of this agreement the question was always put to me as to whether or not we would permit Larson to concede priority of the Zimmerman Counts in Interference. In the agreement I was advised at this conference for the first time that they not only expected a concession of priority but also Larson's first and second applications."

Didn't you say that in this memorandum?

A. Yes, I did and my answer is still the same. I was asked repeatedly what Snap-On would do and I always said they would consent to a concession of priority and there was still no specific demand made to me except that Wacker wants a substantial settlement and wants it 877 promptly. I didn't know what he meant by that.

Q. As a matter of fact, Larson was perfectly willing to concede priority and Snap-On wouldn't release title to that application, isn't that the fact?

A. That is not the fact. There is too much involved to make that a fact in and by itself.

You were asking for a concession on the part of Snap-On of validity and an agreement not to infringe and that is what I was objecting to.

Whatever Larson wanted to do with respect to himself and Precision didn't concern me.

Q. But you were anxious to keep Larson from conceding priority or making any settlement without your consent?

A. He couldn't make any without Snap-On's consent.

Q. You used that fact to negotiate these agreements?

A. I certainly did. I felt he needed some support. He committed a wrong and he was helpless and we were the only ones that could support a proposition that could, in a measure, at least, be reasonable, and it wasn't even that.

Q. You continued to negotiate and refuse to transfer the title of this application in order that Snap-On could drive a better bargain itself, did you not?

878 A. I did not.

Q. Snap-On had nothing to do with your consideration in that regard, is that it?

A. Snap-On had every consideration. What I knew, they knew. What they knew, I knew.

Q. Why were you so anxious to stiffen Larson's position?

A. Because I didn't want it to place us in a position where we had to accept a concession of validity, an agreement not to infringe, and so that we could at least finish our orders that we had then on hand, if you were going to demand more than you could have gotten if you had won the Interference.

Q. Now, in your letter to Snap-On of December 19th, Defendants' Exhibit 69, you say:

"I would like to do this."

That is, withdraw.

"except for the fact that my withdrawal would give more power to AMMCO and their attorney to kill the desire of Larson to proceed."

Now, the "desire to proceed" with what?

A. Let me read that.

(Exhibit handed to witness.)

That meant to stiffen Larson so he would not—

879 Q. Let me interrupt. I hate to interrupt. I want to know what Larson's desire was to proceed. Proceed with what?

A. Larson's desire in view of the fact he was being threatened here was to give up everything and run away from the whole situation and leave Snap-On holding the bag, so to speak, contract or no contract, with existing orders unfilled.

Q. That is what you didn't want him to do.

A. I certainly didn't want him to do that. That would subject Snap-On to damages and under the contract he had no right to do it.

Q. That is the reason you say in this letter:

"All my effort all along has been to stiffen Larson's position so that he would not leave Snap-On Tools Corporation holding the bag, contract or no contract."

A. That is correct. I didn't want Larson to be subjected to such pressure that he would throw everything in your lap and leave us without any ability to finish those orders.

Q. You wanted to finish the orders and didn't want to concede priority, notwithstanding there was perjury?

A. I wanted to concede right along.

Q. If you had conceded priority and the patent had issued, wouldn't that have anything to do with it?

880 It would be a foolish move on your part to issue that patent on the poor claims involved in the Interference.

Q. Then what were you afraid of if we wouldn't issue the patents? What were you afraid of if Larson proceeded and gave a concession of priority? What were you afraid of?

A. I was afraid of the very demand you were making on us would have to be fulfilled and a concession of validity and an agreement not to infringe would have to be subscribed to without any alternative on the part of Snap-On.

I was afraid he would throw the whole thing in your lap because of the pressure you were putting on him and we would have no opportunity to express or exert our rights under that preliminary agreement with him because he would have nothing left, our security would be gone.

We still had legal title of everything in the Larson patent application except the counts in Interference and you could have had those; they were poor claims.

Q. Doesn't it come down to the proposition, Mr. Alberts, that after all Snap-On was your principal client and you were doing everything you could to protect Snap-On?

A. Definitely, and I so advised Larson on every occasion he consulted me.

881 I said, "After all, I am Snap-On's attorney and I have to consider them first," and he knew that and knows that now.

Q. You were also afraid of a possible suit for conspiracy, were you not?

A. I was not afraid of it, no. I was afraid you would be foolish enough to bring one and then we would have to defend.

Q. Now, when did you first suspect or have any reason to doubt that the testimony of Larson was not the whole truth?

A. Well, I would rather state the facts again. What may have been in my mind is hard to determine as to time.

The first inkling I got that Larson was not playing ball, so to speak, in every sense of the word in accordance with his affidavit which he signed in my office about having no connection past, prior or future—I mean past, present or future, with any competitor of Snap-On or Automotive

was on his cross examination when Thomasma's name was mentioned and that was a new name to me then.

That was the first suspicion and I advised Snap-On promptly at that time. I think the cross examination of Larson started near noon on the Saturday of November 2d.

Mr. Fidler asked me if I would continue for the rest of that day and I said I would be glad to stay here until 882 6:30 to give him the opportunity to cross examine Larson, so he wouldn't be recessed, and I complied, and that came out that afternoon. I didn't know at that time who Thomasma was.

Q. Now, in your letter of November 11th—you don't mind my coming over here? (Standing by witness' chair.)

A. No.

Q. (Continuing)—November 11, 1940 from you to Precision, Defendants' Exhibit 42, you say you told the party who called:

"That I have received several inferences to the same effect and that every effort was made to check these charges by arranging for a conference with a party who is supposed to know."

Where did you get those inferences?

A. Krichiver called me on the cross examination, that wasn't an inference, understand, as to the truth of Larson's testimony. He repeated on cross examination that he was the inventor, that all the facts given were true.

From what I could determine at that time, there was only one fact revealed that he was doing business; so to speak, or associating himself with somebody who had been an ex-employee of Automotive.

That was the first inference but there was no sus-
883 picion, or anything brought out in his cross examination that indicated that Thomasma had anything to do with bringing that invention to Larson or anything else or that Larson's dates were wrong.

Shortly thereafter Mr. Krichiver called me and he told me he had a client who was having trouble with Larson and Carlsen; that he had been in communication with Mr. Fidler; he had tried to sell them stock, and he would like to talk to me and he understood I represented Snap-On Tools Corporation. "Would I be interested?"

I said, "I would not be interested in the stock but if you want to bring in your client, I will be glad to talk to both of you."

And I insisted he bring in his client and we made a tentative date. I believe it was November 9th at 2:30. I called Mr. Larson to be there. I called Mr. Daniel of Snap-On to be there.

Q. I asked what the inferences were, not what you did.

A. He had certain information he wanted to reveal to me and that is all he would say and I said, "Bring in your client," and I called Mr. Larson to be there and I called Mr. Daniel.

Daniel came all the way from Kenosha to be there. 884 About two o'clock he called up. Mr. Larson came in and Mr. Daniel came in. I asked him, while he called me, if he wouldn't care to reset that conference and he said, "No."

Q. Well, did you immediately on November 11th, in view of the fact you had strong inferences that there may have been something wrong, talk personally to Larson or Carl-
sen or Ford or Whitaker, or any of the other witnesses, including those who perjured themselves?

A. On November 11th, I wrote a letter to Mr. Larson, setting forth I received an anonymous call and I set forth in the letter exactly what was conveyed to me and I asked him whether there was any truth to the anonymous statement.

I sent a copy of the letter to Mr. Daniel. And I believe that is the letter that I have a post script on that I was leaving for the East the next day. The next afternoon or evening I was leaving for Washington.

And Mr. Larson called me in the morning and said he received my letter and that there was absolutely nothing to it; that Krichiver was again making trouble, and I suspected it was Krichiver again.

I asked Mr. Daniel what we ought to do about it and he said, "I don't see we can do much about an anonymous call."

885 I did not reexamine the witnesses who testified under oath. There was no reason I could possibly give for bringing them down, they testified under oath, I believe, until they were proven to perjure themselves.

Q. They told a pretty convincing story?

A. I was very much convinced.

Q. You didn't think it was worth while to talk to any of these witnesses?

A. You mean after that anonymous call?

Q. Yes.

A. No, I had trouble enough in getting them in.

Q. You were thoroughly convinced the story was true?

A. I knew you had to take testimony. I would find out plenty if you got your testimony. There was no rush about it.

Q. Of course, Mr. Fidler hadn't talked to you until November 20th, you realize?

A. No, November 11th he hadn't talked to me then, no.

Q. Now, you have testified about certain threats which you say Mr. Fidler made during the conference which you had with him alone in his office on November 30th—November 20, 1940, isn't that right?

A. That is right.

886 Q. And you prepared this memorandum, Defendants' Exhibit 70, a couple of days later, did you not?

A. I did.

Q. Now, do you find any of those threats recited in that memorandum?

A. In Item 11 I say:

"Fidler insisted that Wacker of AMMCO would force this matter out in the open if they were compelled to prove these facts by taking testimony at Hartford, Connecticut (apparently Zimmerman's present residence) and elsewhere in the U. S. at great expense. In that event, action for perjury would be insisted and the case thrown wide open with the axe piercing wherever it would fall."

I tried to repeat his words as well as I could.

Q. You have repeated them and read this in the court room, have you not?

A. Most likely. I don't claim I can repeat words of somebody else or my own words twice the same.

Q. At that time you tried to make it as full as you could?

A. I made notes of it that evening and I tried to use his words. I, myself, don't use those words.

Q. Now, another memorandum referred to by you, 887 I think, but that was not offered in evidence, that is the memorandum dated December 18, 1940, a copy of which I hand you.

(Handing paper to witness.)

Now, that memorandum covers, does it not, your conference of November 28th?

A. It covers that conference in part.

I might state that this memorandum of December 18, 1940 was requested by Mr. Daniel.

It does not go into the details that my other memorandum did because Mr. Johnson had heard the entire—had a complete recital of what happened at that conference and I took it for granted he was keeping his associates informed.

I then went down to Snap-On and reformed them, rehashed the whole thing, and there is no requirement to go into detail in this memorandum. He merely wanted me to bring him up to date.

Q. Does that memorandum recite any of the threats which you have testified were made by Mr. Fidler at that conference?

A. It does not for the simple reason Mr. Johnson had those first hand and I was merely trying to bring Mr. Daniel up to date so he could satisfy those asking him questions at the Snap-On offices. That was the only purpose of this report.

888 Mr. Alberts, have you ever testified before?

A. Have I ever testified before? I testified in one case before.

Q. Do you always refuse to answer a question?

A. I don't refuse. There are a lot of questions that I, as a lawyer, know can't be answered yes or no, they are trick questions.

Q. I am going to ask you if you can't answer this question yes or no.

Does that memorandum include or recite any of the threats Mr. Fidler made in the November 28th conference?

A. No, this memorandum does not.

Q. Now, you recall, do you not, that on December 24, 1940, when you and Mr. Hobbs came into our offices, while we were having an office party, Mr. Fidler and I saw you and Mr. Hobbs, and it was asked what should be done about the reporter's notebooks and the testimony which had been taken, that is, the original copy in so far as it had been transcribed, and it was said at that time that the reporter had not transcribed some of his notes, we had trouble getting them, and that we all thought the thing to do was to have those notebooks turned over to you so they could be preserved.

889 Do you recall that?

A. I definitely do not recall that. You came out merely to say hello. You were all having a party there. Mr. Fidler came out and we exchanged the contracts. That

is substantially all that happened. We weren't even in a private office there.

Q. Didn't we go into Mr. Davis' office?

A. No, sir.

Q. You don't recall that?

A. No, sir.

Q. Do you remember Mr. Fidler then wrote the reporter, Mr. Rafferty, and wrote you a letter saying he was sending the letter as had been suggested on the 24th?

Do you remember that letter?

A. I remember receiving a copy of that letter.

Q. Do you remember Mr. Fidler's covering letter?

A. Mr. Fidler's letter to Mr. Rafferty?

Q. No, his letter to you to which was attached a copy of his letter to Mr. Rafferty?

Q. I don't have my file from that date on. I merely brought my file to the date of the settlement.

Q. I show you a photostat of our office copy. I 890 will read the letter:

December 26, 1940.

"Mr. Harry C. Alberts,
38 South Dearborn Street,
Chicago, Illinois.

Dear Mr. Alberts:

Re: Larson v. Zimmerman
Interference No. 77565.

"I enclose a copy of a letter I have just written to Mr. Rafferty, the reporter, as suggested during our conference of December 24th.

Very truly yours,

And it was signed by Mr. Fidler. Do you remember that letter?

A. I remember that letter, yes.

Mr. Lindsey: You will admit the authenticity of this?

Mr. Freeman: If it comes out of your carbon file, that is all we need.

Mr. Lindsey: I will offer it in evidence as Plaintiff's Exhibit 22.

And I will offer Mr. Alberts' memorandum of December 18, 1940 with respect to the November 28th contract in 1891 evidence as Plaintiff's Exhibit 13.

(Said documents were thereupon received in evidence by the court and marked, respectively, as PLAIN-
TIF'S EXHIBITS Nos. 22 and 13.)

Mr. Lindsey: Q. Now, did the reporter turn those books over to you?

A. He did not.

Q. He brought them over to your office?

A. That is right.

Q. What did you do with them?

A. I told him I wasn't interested in those books, I had never asked a reporter for books before, ask Mr. Fidler what he wanted to do with them. I wasn't interested in them especially after he told me in two of the books he had shorthand notes in other cases and he wouldn't turn over to me and he brought them to me with portions scratched out.

If he gave them to me, they would have been delivered with all the other exhibits. I had everything else except those books when Mr. Ooms asked me to produce them.

Q. You heard the reporter testify—

A. I did.

892 Q. —in the pretrial depositions?

A. I did.

Q. You heard him say he had turned over two books to you containing nothing but the notes in this Interference, isn't that correct?

A. Yes, and that was contrary to what he told me.

Q. He testified to that effect?

A. Well, he testified a little vaguely, yes.

Q. And he also testified that you told him to keep the other two books in which there were only partial notes with respect to the interference, there being other notes about other cases, and that you told him to cross out the notes having to do with that Interference?

A. No, he testified he had crossed them out and then brought them to my office.

Q. Now, did you tell him to cross those out?

A. I certainly did not.

Q. Now, you had quite a little bit to say about a bonfire?

A. That is right.

Q. And you discussed this bonfire with Mr. Hobbs?

A. I wouldn't say I discussed it. On the way home from that December 24th meeting, and that is all I
893 would call it, a meeting for exchange of contracts in the outer office—we didn't even see the party. We just heard there was a party in progress, I mean the noise of that party.

We were in the reception room at that time and I was—
I brought my contract and Mr. Hobbs brought his—

Q. I am asking about the bonfire. I am not wanting to know about the contracts. We have got those in. Let's get along.

A. Well, when we went back, nothing much was said for awhile. I told Mr. Hobbs that I still didn't feel very good about the whole thing.

Q. Let's talk about the bonfire.

A. I am getting to that.

And that I felt that that was the wrong thing to do and I said, "By the way, I didn't see them hold the bonfire."

He said, "Well, we will hear from them."

And then he said, "Come on over to my office and I will give you a drink, you will feel better."

Q. Well, now, did Mr. Hobbs say he had an understanding with us, Mr. Fidler and me, that there would be a bonfire?

A. He didn't say it in that way. He said there was a suggestion of a bonfire.

Q. Now, who had made that suggestion of a bonfire?

894 A. He said there was a suggestion of a bonfire. I am sure Mr. Hobbs did not suggest it, so it must have been Mr. Fidler. He had stated in the December 13th conference, if everything was settled, the evidence would be done away with.

Q. So, Mr. Hobbs indicated it was Mr. Fidler that was going to destroy the evidence, is that right?

A. No, he didn't mean Mr. Fidler was going to destroy the evidence. He indicated Mr. Fidler had suggested all the parties throw their records into the bonfire.

Q. Oh, he had just suggested it?

A. No. Who are you talking about, "he"?

Q. Mr. Fidler had just suggested there be a bonfire, is that right?

A. He had just suggested there would be a bonfire.

Q. Did you agree to have a bonfire?

A. I wasn't in that at all. I wasn't interested one way or the other. My client had clean hands.

Q. I don't care about your client. I want to find out, did you agree to a bonfire? Did you or didn't you?

A. I didn't agree to it but I didn't object to it.

Q. Did Mr. Hobbs agree to a bonfire?

A. He was the same attitude I was.

895. Q. I don't care about his attitude. Did he agree to a bonfire?

A. I won't put it that way, no.

Q. What did he say? Use his exact language, Mr. Alberts.

A. I think I answered that question.

Q. What did he say? Just repeat as closely as you can his words.

A. He said there had been a suggestion of a bonfire where all the parties would get their records in this case and have a good old bonfire, or something to that effect.

Q. That is, we would all get together and have a bonfire? You, too?

A. That included me, sure.

Q. You saved all of your records, did you?

A. Not for that purpose.

Q. I am not asking for that purpose.

A. I did save all my records.

Q. Won't you please answer the question?

A. Well—

Q. I asked you if you saved all the evidence in the Interference. Now, did you or didn't you?

A. I did.

896. Q. Did Mr. Hobbs save all he had, so far as you knew?

A. I don't know what Mr. Hobbs saved. I don't know he had much of anything.

Q. He had a lot of correspondence about these settlements, did he not?

A. I hadn't seen the file up to that time.

Q. You have seen it now?

A. I have seen it now.

Q. He kept everything, didn't he?

A. He kept letters. I received a photostat of a letter that wasn't in the file originally.

Q. Did we ever ask you for anything to put in a bonfire, including the notary's books of the original testimony or the physical exhibits or the paper exhibits or the Larson drawing, Exhibit 27?

A. Well, I saw a letter in the file from Fidler to Mr. Hobbs saying—I would rather have the letter if it is available, I am not saying I am going to quote it verbatim now—that he is holding the transcript and the Thomasma affidavit subject to your call.

Q. That is what you recall of that letter, is it?

A. In substance, yes.

897 Q. The transcript and the Thomasma—

A. I won't say the transcript. I know the Thomasma affidavit is mentioned.

Q. You are sure of that?

A. I am sure of that. I would like to see the letter.

Q. Well, I will show you the letter. This is Mr. Fidler's letter to Mr. Hobbs of December 31, 1940. Is that the letter you had in mind?

(Handing paper to witness.)

A. Yes.

Q. As to the testimony and Thomasma statement matter, I am holding everything subject to your call.

Q. That, to you, meant he was going to destroy it, is that right?

A. No, it didn't mean that. He had nothing to do with the Thomasma statement. I don't see any reason why he should call for it.

Q. Because you couldn't see any reason why Mr. Hobbs should call for it, you just assumed that was a letter agreeing to destroy it, is that what you assumed?

A. Yes. I would rather have Mr. Fidler's construction of that letter.

898 Q. Wait a minute, Mr. Alberts. You referred to this letter, you know. I didn't bring it up. Now, I am asking you what you gathered from that statement you read as to a bonfire?

A. I gathered from this statement that that was the closest call of compliance with that suggested bonfire that yet was made in the case.

899 Q. When did you first see this letter to Mr. Hobbs?

A. When his file was made available to me.

Q. And when was that?

A. Just before I pleaded the defense of compounding a felony.

Mr. Lindsey: I offer the letter in evidence as Plaintiff's Exhibit No. 23.

(Said document was thereupon received in evidence by the Court and marked as PLAINTIFF'S EXHIBIT No. 23.)

Mr. Lindsey: Q. Did Mr. Hobbs say, with respect to this bonfire, that there was a tentative understanding?

A. No, I wouldn't even go that far.

Q. He didn't say anything about "understanding"?

A. If you know Mr. Hobbs, he doesn't express himself that way.

Q. And he didn't say then that there was a tentative understanding?

A. I wouldn't put it that way, no. It wasn't in express words, no.

Q. Did he say, "If the matter was settled, everything would be done away with"? Did Mr. Hobbs say that?

A. Mr. Fidler said that.

900 Q. Well now, yesterday you testified that you were skeptical about something that you didn't know about, and you asked Mr. Hobbs, and I quote:

"What did Mr. Fidler mean by 'done away with'?"

And then you said, and I am going to show you the testimony:

"And he, referring to Mr. Hobbs, of course, said, 'If the matter was settled everything would be done away with'."

Now, did Mr. Hobbs say that?

A. I didn't say "skeptical". I said, "Well, a statement was—"

Q. Well now, I was merely trying to save time.

A. I would rather read the whole statement.

Q. O.K.

A. "A statement was made at that conference that I didn't quite understand, and it appeared to me that I wasn't in on everything, and after they left I said to Mr. Hobbs, 'What did Mr. Fidler mean by "done away with", and he said, 'If the matter was settled everything would be done away with.'"

Q. Mr. Hobbs said that?

901 A. Yes. He said that is what Mr. Fidler meant.

Q. And then read on, will you, about the tentative agreement?

A. "I said apparently he had some conversations I wasn't in, and he admitted he had lunch with him several times or at least one time, that I wasn't present, and I knew nothing about it, that they had some conference I knew nothing about, that he didn't report to me. I thought it was all right. I thought he should explain it to me. He said, frankly, there was a tentative understanding submitted by Mr. Hobbs that if a settlement goes through, or if the settlement goes through all the parties would have a bonfire of all the existing records and that would be the

end of it," and I will say now that my choice of the word "understanding" was a very poor one. That word was not used by Mr. Hobbs. The conduct of the parties was tantamount to an understanding. That is the way I meant that word.

Q. When you testified yesterday, that is, gave this testimony that you have just read, Mr. Hobbs was not in the Court room, was he?

902 A. I don't know. I was too occupied with my testimony.

Q. Will you look around and tell us whether Mr. Hobbs is now in the Court room?

A. He is.

Q. You recall in the Third Amended Petition of Snap-On which you verified, you said that Snap-On had been coerced by Automotive and its agents.

A. That is right.

Q. And you heard Mr. Johnson testify that there was no coercion, did you not?

A. I believe he testified, the way I construed his statement, that beyond the threats he testified to, that he personally was not subject to any coercion from there on.

Q. You don't remember he testified that Snap-On was not coerced either?

A. Well, subject to my qualification, that goes for that answer, too. He had testified as to threats he had known of, and he was testifying only as to his direct knowledge and not what somebody told him.

Q. And then you say that by reason of the duress, coercion and threats against Snap-On, Automotive compelled the cancellation of the agreement, Exhibit No. 5, 903 and between Snap-On and Larson?

A. Yes.

Q. Will you please tell the Court just what the duress was, that Automotive and its agents exerted of such a nature as to compel Snap-On to agree to the cancellation of that agreement?

A. Well, my entire testimony was directed to that most of the day, but I am willing to go through it again.

Q. I don't want you to go through all your testimony today. I just want you to confine your answer to the question, Mr. Alberts.

A. Will you just read the quoted part, just the allegation? That is all I want.

Q. It is a pretty long allegation.

A. No, I mean the one you had just read from.

Mr. Lindsey: Let us read the question. Maybe that will shorten it.

(The last question was read by the Reporter as follows:)

"Question: Will you please tell the Court just what the duress was that Automotive and its agents exerted of such a nature as to compel Snap-On to agree to the cancellation of that agreement?"

The Witness: I am now going to testify as to direct things and not the conduct and general tenor of the negotiations. I am going to briefly enumerate what I had in mind when I made that allegation.

The first conference of November 20th, 1940 with Mr. Fidler, where he set forth what he had in that Thomasma affidavit in the way of a summary, that he showed me a drawing by Thomasma of an abrasive chuck, and then had me look at Exhibit 27 in Interference, to make a comparison; that I made that comparison and came to the conclusion and so expressed myself to Mr. Fidler, that they certainly did look like the drawings were made by the same party; and the details which were given by Mr. Fidler that I knew from my observation and hearing of the cross examination of Larson in the Interference Deposition, that Thomasma must have known the facts and was closer to it than anybody else, and that Larson—

Q. I wonder if we can shorten this. I am asking you what the duress was.

A. And at the end of all of that he said, "Well, Mr. Wacker wants—will make me force the matter out in the open and prosecute Larson; and the axe will pierce wherever it falls." That is the first thing.

Q. And you gathered from that he meant Snap-On, is that correct?

A. No, I didn't gather from that. I was still then the attorney for Larson. He was directing it to—

Q. No, I am talking about Snap-On. The threats you say were made against Snap-On to compel Snap-On to cancel its agreement with Precision.

A. All right.

Q. I want you to tell the Court—

A. All right.

Q. —just what the duress was and just what Snap-On had done in participating in this conspiracy of perjury to

put them in the position where they would have to yield. Just what were they guilty of, just tell the whole story.

A. My testimony always was, and still is, they were guilty of nothing.

Q. Then they weren't under any duress?

A. They certainly were under duress, and if you want it limited to Snap-On, I will be glad to give it to you.

Q. That is what I would like to have, if you can do it.

A. All right. The conference of November 28th, 1940, where Mr. Fidler emphatically stated he was going to proceed on the basis that Snap-On was Precision and Precision was Snap-On, that Snap-On's hands were not entirely clean in this matter, that Mr. Wacker was going to unleash the dogs if this matter wasn't settled promptly to his satisfaction. Then—

The Court: Haven't we been over this a couple of times?

Mr. Lindsey: Yes.

The Court: What is the reason for going over it again?

Mr. Lindsey: I am trying to find out, may your Honor please, how Snap-On, according to his pleadings, would possibly be under any duress or coercion, unless they had a part in this conspiracy to defeat Zimmerman's rights.

The Court: I have heard this man give that testimony either two or three times before, today. Let us take a recess for ten minutes.

(A recess was taken.)

Mr. Lindsey: Q. Mr. Alberts, after Mr. Larson confessed perjury to you on November 28th, 1940, did you call Mr. Hobbs for Mr. Larson when Mr. Carlsen called on Mr. Hobbs for the first time about that settlement matter?

907 A. No. The way I remember, the first telephone contact was made by him calling me. I didn't know where they were going.

Q. That was after Mr. Larson and Mr. Carlsen had called on Mr. Hobbs that there was any communication direct between you and Mr. Hobbs, is that correct?

A. That is the way I remember it.

Q. And what did Mr. Hobbs say when he called you the first time? Make it very brief now.

A. He told me that Larson—Carlsen was in, that he had talked to them a very short time, and that they had told him that they had perjured themselves and they were on the spot. They had told him I was the attorney in the Interference and I interrupted him by saying, "Well, Mr.

Hobbs, I want you to know right now that I had no knowledge of that perjury up to November 28th, and he said that they so stated to him, and that wasn't the reason he was calling me, and he wanted to know what my view was in the matter, what Snap-On's position would be, and wanted my suggestions, whatever I had to say on the matter, and I briefly stated by view, and he said he doesn't see anything else other than try to make a settlement in the case, and I told him that whatever was reasonable, 908 whatever Larson would have to do that was within reason, Snap-On would go along and I would make such recommendation to Snap-On, and I am sure whatever recommendation I made they would go through with.

That was the tenor of the conversation.

Q. Now, you filed Snap-On's first Petition for declaratory Judgment against Automotive on July 6th, 1942, and you amended that Petition on July 21, 1942, and neither in the petition nor in the amendment did you refer to any perjury or compounding of perjury. On July 31, 1942 you filed the Second Amended Petition in which you claimed or charged that Automotive had compounded a felony by charging that Larson and his witnesses had testified falsely.

Now, prior to July 31, 1942 when you filed this Second Amended Petition, did you consult with Mr. Hobbs or any one in his office as to what his recollection was as to the facts with respect to threats and duress and coercion and bombings and the other things about which you have testified yesterday and today?

A. I did not directly consult Mr. Hobbs, but—

Q. Now, that Second Amended Petition was filed July 31, 1942, and you waited about nine months and filed 909 your Third Amended Petition on March 1, 1943, at which time you, for the first time in your pleadings, positively alleged that Larson and several of his witnesses had committed perjury.

A. I alleged that in the Second Amended Petition, but not so specifically, that is all. You filed a motion to strike, and before it was decided I amended the pleadings because there were other matters that came up that needed amending.

Q. I was trying to fix the dates. The pleadings will speak for themselves.

Between July 31, 1942 and March 1, 1943, did you talk

to Mr. Hobbs or Edward Haight or anybody in his office as to the facts or their recollection of the facts as to the compounding of the felony and their knowledge of the perjury and bonfires and all and sundry things you testified about?

A. I consulted with Mr. Hobbs who had some contact with them, yes.

Q. When was that you consulted with Mr. Hobbs?

A. Sometime before the Second Amended Petition was filed.

Q. You said you hadn't just a minute ago. Let us get it straight.

I mean with Mr. Ooms, pardon me.

Q. I am talking about Mr. Hobbs. Can't you possibly answer a question directly, Mr. Alberts? Let us get along.

A. I misunderstood the question.

Q. At the time that these settlement agreements were entered into, the latter part of 1940, December, 1940, you knew, did you not, that Precision had designed and/or wrench to place on the market?

A. Prior to which date?

Q. By the time that these agreements were entered into, we will say December 20, 1940?

A. December 20?

Q. 1940.

A. No. December 26th was the first time that he came to my office and told me he had the new wrench.

Q. Oh, December 26th he came into your office?

A. Yes.

Q. Who was that?

A. Mr. Larson.

Q. Where was that office, where was the office at that time, your office?

A. 38 South Dearborn. It has been there for a good many years.

Q. And you prepared the application that day while he was sitting there?

A. I roughed out an application for him.

Q. Did you prepare and finish the application the day he called?

A. It wasn't in what I considered final form. It was very close to finished form.

Q. And the drawings were prepared?

A. No, they weren't. I worked off of an old photostat.

Q. And the claims were prepared that day?

A. Some claims, yes.

Q. They weren't finished, were they?

A. All the claims?

Q. All the claims weren't drawn that day?

A. All the claims were roughed out.

Q. Just roughed out?

A. Well, they were complete.

Q. Was the specification complete?

A. Yes.

Q. What time did he come in on December 26th, 1940?

912 A. He came in in the morning and told me he would like for me to get a written description of this new wrench of his, and I said that from what I had in my files I could just as easily describe it in a form of a patent application, and I asked him what he wanted it for. He said, well, he was going to Snap-On Tools Corporation that afternoon and he wanted to show it to them there, he wanted to get busy on it, he wanted to know if they were interested, and if not he had somebody else that he knew would be interested.

So he said he had some other work to do in the Loop or somewhere in the city, anyway, he would be back, and he asked me when I could get that for him, and I said that it would be a matter of four or five hours—perhaps more—that he should come in whenever he was ready to go, whenever his work was done and he was ready to go to Kenosha, and he came in, oh, I would say three o'clock and I gave him what I then prepared and he took it along.

Q. Now, tell us how far along that application was completed by three o'clock.

A. It was completed and ready for submission to a draftsman, but he did not want me to submit the photo-
913 stat that I had resketched the new structure on, because he was going to make a change in the shape of the case, and until that change was made he didn't exactly know the proportions, that he would then bring down a model and have my draftsman draw it up.

Q. Well, then the drawings were made later, is that correct, the Patent Office drawings?

A. The Patent Office drawings were made later.

Q. And I suppose the specification and the claims were rewritten later, were they not?

A. No, they had the same numbers on. I worked off of the photostat of his previous wrench and merely sketched in the changes.

Q. How complete was the specification and claims at three o'clock?

A. It was complete, I would say complete.

Q. Absolutely complete, ready to file in the Patent Office?

A. I would say I had intended to go over it again for corrections of prepositions or a word here or there that I may have thought was better suited at a later date. I thought it was a pretty good shape, ready for filing, except for the drawing.

914 Q. It was all in shape except for the—

A. Fairly.

Q. —drawings?

A. Yes.

Q. I want to find out how complete, not fairly. This is critical.

I am not trying to be facetious, may your Honor please.

The Witness: I would say it was sent in substantially in the form it was in then.

Q. Substantially, but there were some changes?

A. Oh, I won't say I didn't change a preposition here or there, or a word. The substance was there and I think everything was there except stenographic corrections. We were doing it in a big hurry and I am not so sure that—I wasn't sure then—I didn't have the opportunity re-reading it for my final o.k. I will say that much.

Q. So Mr. Larson came in in the morning and explained this wrench to you and made these sketches, or whatever they were, and you dictated the specification and you dictated the claims and Mr. Larson left by three o'clock that day for Kenosha?

A. I didn't dictate the specification or the claims.
915 I rewrote a copy of an application of one of his former applications and made the necessary changes.

Q. Have you got that file with those original specifications and claims as you drafted them?

A. Here?

Q. Yes.

A. No, I do not.

Q. Will you produce them tomorrow?

A. I will.

Q. You will recall, will you not, that that application was executed in Kenosha on December 28th, 1940?

A. Well, I have a recollection, yes.

Q. In other words, this was submitted to you and you prepared all this, and Mr. Larson read it over and you went up to Kenosha and you executed it all in one day?

A. I didn't know he was going to execute it there, but he did.

Q. Isn't it a fact, Mr. Alberts, that it takes more than that time to prepare an application ready to be filed in the Patent Office?

A. No, it isn't a fact. I have done that repeatedly.

Q. I hand you this, and ask you if this is not the drawings for Larson Patent No. 231214 which issued on 916 the application that you have just been referring to?

A. They are.

Mr. Lindsey: I will offer the drawings of the patent in evidence as Plaintiff's Exhibit 24, and a certified copy of the oath for the application maturing into this patent as Plaintiff's Exhibit 25.

(Said documents were thereupon received in evidence by the Court and marked respectively as PLAINTIFF'S EXHIBITS 24 and 25.)

Mr. Lindsey: That is all, your Honor.

The Court: Any redirect?

Mr. Freeman: No redirect.

The Court: All right.

(Witness excused.)

917 Mr. Ooms: I think the reporter will not need to take this. I am going to read very rapidly.

This is the deposition of Frederick Glade Wacker.

(Thereupon Mr. Ooms read from the deposition of Frederick Glade Wacker.)

918 Deposition of Frederick Glade Wacker taken in the above-entitled cause by the Defendants Snap-On Tools Corporation, Precision Instrument Manufacturing Company and Kenneth R. Larson, before Thomas B. Goodwill, a Notary Public of Cook County, Illinois, on Friday, April 23, 1943, at Suite 1901, 332 South Michigan Avenue, Chicago, Illinois, pursuant to Notice of Taking Depositions and proof of service shown thereon.

919 State of Illinois }
County of Cook } ss.:

FREDERICK GLADE WACKER, called as a witness by the Defendants Snap-On Tools Corporation, Precision Instrument Manufacturing Company and Kenneth R. Larson, being first duly sworn by the Notary Public before the commencement of his testimony, was examined and testified as follows, to-wit:

Examination by Mr. Freeman.

Mr. Freeman: Mr. Reporter, will you make it appear that Mr. Freeman is examining on behalf of Snap-On.

Q. State your full name, Mr. Wacker?

A. Frederick Glade Wacker.

Q. And your address?

A. Residence?

Q. Residence, please?

A. 490 East College Road, Lake Forest, Illinois.

Q. And your occupation?

A. Manufacturing.

Q. With what company?

A. Automotive Maintenance Machinery.

Q. And what is your official connection with that company? What title do you hold?

A. President.

Q. And how long have you been president of it?

A. Since we started, I believe it was in 1922.

Q. What is the general nature of the Company that you started in 1922, of which you are president?

920 A: We started making automotive service equipment, tools, but as we have gone through the years we have taken on other lines, in addition to that. It is mostly—I would say that we manufacture machine tools and precision tools, largely.

Q. And your Company is the owner of the two Zimmerman patents involved in this suit?

A. That is right.

Q. And Zimmerman is an employee of your company?

A. That is right.

Q. When did he enter your employ, if you recall? About when?

A. About in the middle of the 1920s, somewhere in there; I would think 1925 or 1926; don't you think that is about right? I don't know exactly.

Q. And is he in your employ at the present time?

A. No; he is not.

Q. When did he leave your employ?

A. As I remember it, I would think he left our employ about somewhere around 1937, but that is a guess, because I don't know, I don't remember. I could check it up for you and let you know definitely.

Q. Do you recall an Interference involving Zimmerman Applications which have now matured into the 921 patents in suit, with Kenneth R. Larson?

A. Yes.

Q. When was your attention first directed to the Interference generally?

A. I think an interference was declared by the Patent Office, of which Mr. Fidler notified me sometime in 1937 or 1938, I would guess 1938.

Q. Have you kept in rather close touch with the Interference subject matter, from the time you were notified by Mr. Fidler, up to the termination of the Interference?

A. I heard I believe regularly from Mr. Fidler as to the progress of it. Of course, I am not a patent attorney; and I kept in touch with it in a general way, without being familiar with the legal detail at all times.

Q. And were the reports from Mr. Fidler to you or to your company in writing?

A. Some of them were and some of them were over the telephone. Some of them possibly, probably in conference, I would say.

Q. Now you have mentioned Mr. Fidler in connection with this Interference. Did you, during the pendency of the Interference have any contact with any of the other members of the firm of Davis, Lindsey, Smith & Shonts?

The Witness: During the pendency of the Interference, is that the question?

922 Mr. Freeman: Q. (Continuing) From the time the Interference started until it ended?

A. Yes, also with Mr. Lindsey.

Q. And did you by any chance have any contact or connection with Mr. Hibben?

A. I met Mr. Hibben on several occasions and I knew

that he was working with Mr. Fidler on the case, but I don't think I had any discussions with Mr. Hibben.

Q. These discussions that you had with Mr. Fidler, and then you mentioned Mr. Lindsey, were they joint discussions, that is, were they when both Messrs. Lindsey and Fidler were present?

A. I think some were and possibly some weren't.

Q. And did you have any correspondence with Mr. Lindsey with respect to the Interference?

A. I don't remember any on my part. He might have written me.

Q. You, of course, know George B. Thomasma?

A. Yes.

Q. And he was a former employee of your company?

A. That is right.

Q. And he entered your employ along about 1927?

A. I would think that was about right.

Q. And he continued in your employment until about June, 1938.

923 A. I think that is right.

Q. 1939? Pardon me.

A. Well, along in there, yes.

Q. When did you first learn of Mr. Thomasma's connection with Precision Instrument Manufacturing Company, one of the defendants in this case?

The Witness: Do you mean when did I first suspect or when did I first learn?

Mr. Freeman: Well, you can answer it just as you please. I don't care whether you suspected or learned. You might give us both, then.

A. Well, I can say that some of our salesmen, who had been covering the territory along in, I would think 1938, had brought in rumors to the effect that a tension wrench was being manufactured in Des Plaines and that they heard that Mr. Thomasma was connected with it.

Q. That is the suspicion you are talking about?

A. That is the suspicion.

Q. Now, tell us when you learned definitely that Mr. Thomasma was connected with Precision?

A. Well, we learned—I discussed the matter with Mr. Fidler, and we checked up I believe on the incorporation papers of the Precision Instrument Manufacturing Company, and we found that a Mr. George B. Thomasma, not

Thomasma, but Thomasa was one of the incorporators 924 and I believe the vice president of that company. We then suspected quite strongly that Thomasa and Thomasma were the same, and we thought at that time that— we felt pretty sure that Thomasma was the same one. Thomasa, Thomasa, was the way he appeared in the incorporation papers.

Q. Now, do you have any record that will tell us when you obtained the certificate of incorporation of Precision that gave you this information that you have just testified about?

A. No, I don't think I have.

Mr. Freeman: Might I ask counsel; then, for the Plaintiff, if they have any record showing when the certificate of incorporation was obtained that disclosed the information that there was a party by the name of George B. Thomasa as one of the incorporators?

Mr. Fidler: I think that that information appears in the files, in among some of the papers which are in my files. I don't know just where to put my finger on it at this time, but probably in the papers which we have collected for you. (Discussion off the record.)

Mr. Fidler: I think it was the latter part of 1938 or the first part of 1939.

Mr. Freeman: All right.

Mr. Fidler: We didn't secure copies of the articles 925 of incorporation, though, until I think it was 1940.

Mr. Lindsey: I would like to make a short statement on the record, if I may, Mr. Freeman. I do not want it to appear at any suggestion that I am not willing to produce any papers or anything of that sort, but I want to say that I did not come into this Interference until after all the testimony was taken. I knew there was an interference. I am willing to take the stand on this, as it was not until, as I recall, around the 9th or 10th of December, 1940, that I was consulted about this at all. I knew there was an interference. And I know nothing about this correspondence. I have glanced at some of it. So that you will have to rely largely on Mr. Fidler. I am making that statement because I don't want you gentlemen to think that I am holding back anything, because I am really not familiar with it.

Mr. Freeman: That is perfectly understandable, Mr. Lindsey.

Q. Then, you had some suspicion about Mr. Thomasma as early as 1938?

A. I would think so, yes. Wasn't that the date that he was discharged, in 1938?

Mr. Lindsey: 1939.

The Witness: Or was it in 1939?

Mr. Freeman: He was discharged in June of 1939.

926 The Witness: Well, it might have been 1939 before we had real suspicion, then.

Mr. Freeman: Q. Well, if you obtained the articles of incorporation or the certificate from the Secretary of State, you were suspicious at that time, were you not?

A. That is right, certainly.

Q. What was Mr. Thomasma's position or job with your company?

A. He was sort of an all round machinist and tool maker, but frequently worked with Mr. Zimmerman on some of his experimental work.

(Mr. Harry C. Alberts and Mr. Robert L. Grover arrived in the hearing room at this time.)

Q. Why did Mr. Thomasma leave your employ in June of 1939?

A. Well, because of my suspicions, I called him into the office and told him what I had heard. He denied it rather feebly and I told him I had also heard that he had removed certain wrenches and tools from our factory, which he admitted, and on the strength of that I told him that his services were at an end so far as we were concerned.

Q. I notice that you used the words "Removed certain wrenches". Do you mean he picked up some property not belonging to him and belonging to your company?

A. Well, he took them out of the factory. Company property, now, that is true. He more or less contended 927 that some of the things that he took out to demonstrate at various times on his own time.

Q. Did he return that property?

A. That I don't know. In other words, I think he took it out without going through the regular requisition route—

Q. Trade channels?

A. —of getting it out of the stock room.

Q. And did you have to take any steps to have that property returned or to have him pay for what he had taken?

A. No, because it did not amount to a great deal.

Q. Did you check the amount of property that he took out?

A. No. He admitted that he had taken out several items, and the difficulty, of proving anything there, was that certain things he had taken out with our permission, and to find out just what he had taken out with our permission and what he hadn't—

Q. When things are taken out of your plant with your permission, that is either in the form of a requisition or with somebody's approval?

A. It should be.

Q. And was there any check-up made after he had admitted taking some of your property out of the plant?

A. No.

Q. Did you have anyone else make a check-up?

928 A. No, I don't think so.

Q. You just merely let it go, then, when you found that he had removed some of the property?

A. I was primarily interested in getting him out of the factory, period, and I wasn't concerned beyond that.

Q. Did you locate any of the property that Mr. Thomas had removed?

A. No. I think it was only several wrenches, and as far as I know it was never checked up or followed up. The whole thing wouldn't have amounted to probably a hundred dollars, and to follow it through would have cost much more.

Q. When you say it probably didn't amount to over a hundred dollars, how do you know?

A. Well, I don't. I don't know definitely.

Q. You didn't trust the man when you fired him, did you?

A. No, I did not.

Q. And he had admitted taking some property belonging to your company?

A. That is right.

Q. And he had admitted taking that property without the consent of the Company or those authorized to give consent?

A. That is right.

Q. And yet you made no check-up whatsoever?

A. No. Not that I remember.

Q. Do you know whether anyone else in your company made a check-up?

A. No, because I don't think, with our records as they were—I don't think it is possible that it could have been any great amount.

Q. Did you ask Mr. Thomasma to return the property that he had removed?

A. No, because then it would have been second-hand, and in any event, it wouldn't have been saleable.

Q. How did you learn definitely, then, that Mr. Thomasma was connected with Precision?

The Witness: You mean beyond the papers of incorporation?

Mr. Freeman: Well, that was your suspicion that led you to your getting the certificate of incorporation?

A. Yes.

Q. And I now would like to know what you learned, when you definitely knew?

A. We definitely knew, I would say in the summer of 1940, when Mr. Thomasma himself approached us and, among other things, admitted the fact.

Q. Well, he had admitted the removal of your property prior to the time you fired him?

A. We fired him at the time he admitted it.

Q. And did he admit, then, that he was connected with Precision Instrument Company?

930 A. No. He did not.

Q. Did you confront him with the fact that you had a certificate of incorporation showing his name somewhat mutilated?

A. I don't think at that time we had that certificate. I think we secured that certificate or a copy of it after we fired him.

Q. Are you willing here to say that you fired Mr. Thomasma solely upon suspicion that he was connected with Precision Instrument Company?

A. Both on suspicion and his rather weak denials, plus the fact that he had admitted removing certain tools from the factory.

Q. You referred to a feeble or a weak denial of his having removed certain property from your plant?

A. No. I say a weak denial of his connection with Precision.

Q. Then, you actually did accuse him of having con-

nection with Precision Instrument Company prior to the time he was fired?

A. That is right—I mean at the time he was fired.

Q. And when I used the word fired, that is exactly what took place?

A. Discharged.

931 Q. At your direction?

A. That is correct.

Q. Did Mr. Fidler have any connection with the discharge of Mr. Thomasma?

A. None at all.

Q. Did you arrange for any interviews as between Mr. Thomasma and Mr. Fidler, prior to the time you fired Thomasma?

A. No.

Q. Did you inform Mr. Fidler, prior to the time Thomasma was fired, that Thomasma had been accused of removing property belonging to your company without your consent?

A. I doubt that. I wouldn't be sure. I don't know.

Q. If you did advise Mr. Fidler, that would be among the correspondence?

A. Or I don't remember that I did, and it might or might not have been among the correspondence, because we would frequently telephone each other rather than write letters.

Q. When did you first advise Mr. Fidler that Thomasma had removed property belonging to your company?

A. I do not remember that I did advise Mr. Fidler at that time.

Q. Mr. Fidler knew that at the time that he obtained 932 the affidavit of November 15, 1940 executed by George

B. Thomasma, did he not?

A. Why, he may have, but then we rehearsed the whole thing—I mean discussed the whole thing in the light of the Interference and the situation involved in it.

Q. So that prior to Thomasma's execution of the affidavit, Mr. Fidler, your counsel, then knew that Thomasma had removed certain property not belonging to him, from your company?

A. He may have. I don't know. I presume he did.

Q. Now, you had suspicion that Thomasma was connected with Precision. What did you do to confirm that suspicion? When I say "What did you do", I mean not

necessarily you, yourself, but did you direct anyone else to check up Thomasma's connection or to follow up your suspicion of his connection with Precision?

A. Not at that time.

Q. Well, when did you then first follow up your suspicion, in order to get confirmation of it?

A. Mr. Thomasma himself admitted at a meeting that he sought one night, at Mr. Fidler's house, Mr. Thomasma admitted his relationship in that conference.

Q. That is, Mr. Thomasma met Mr. Fidler at Mr. Fidler's home?

A. That is right.

933 Q. Who arranged for that meeting?

A. Mr. Travis called me.

Q. And who is Mr. Travis?

A. Mr. Travis was a former superintendent of ours under whom Thomasma had worked, and Mr. Thomasma approached Mr. Travis and asked Mr. Travis to arrange for a conference between himself, Thomasma, and myself, and I insisted that Mr. Fidler be in on any such conference.

Q. When was that conference?

A. That conference was in the summer of nineteen—now wait a minute—it was either late summer, or autumn. I think it was in the early part of November, or the latter part of October, of 1940.

Q. What did Mr. Thomasma tell you at that conference?

A. Mr. Thomasma I think was worried because he felt that an injustice was being done to us as a result of his activities, and I think he wanted to clear his own skirts, and at the same time, while he didn't want to hurt us, his position was that he did not want to get hurt himself, and he arrived at that conference, to complete the story, with an attorney by the name of Mr. Krichiver.

Q. Now, Thomasma's desire to clean his skirts, did he tell you that?

A. Well, I think he was worried. He put it on a basis that he felt that an injustice was being done to us and
934 he would like to rectify, but at the same time he didn't want to hurt himself as a stockholder of the Precision Instrument Manufacturing Company.

Q. In other words, he wanted to clear himself and still have the benefit of that stock interest that he had in Precision?

A. Or else have his stock purchased.

Q. Did he offer to sell you the stock?

A. He wanted to know if we would be interested in buying it, he and Krichiver both.

Q. Did he make any proposal or tell you how much money he might want to dispose of it?

A. No, because we told him that we weren't interested in buying any stock under conditions of that kind.

Q. In Thomasma's desire to clear himself or clean his skirts, did he offer to reimburse you for the property he had taken?

A. No.

Q. Unlawfully, or without your consent?

A. No, because our salesmen from time to time carry samples and they are lost, and we didn't take the loss of a few odd tools very seriously. The amount didn't amount to much.

Q. When you say "a few odd tools", how do you know it was a few odd tools?

935 A. We presumed that from his statement, plus the fact that it is pretty difficult to get away with any sizeable quantity without records showing it.

Q. The tools that Thomasma did take had value, though?

A. Oh yes.

Q. Thomasma left your employ in June, 1939, and you have testified that you met with him in late October or early November of 1940?

A. That is right.

Q. Now tell me whether or not you saw Thomasma between June of 1939 and October or November of 1940?

A. No. I did not.

Q. You had no connection whatsoever with him—

A. Not at all.

Q. Did you during that time have any investigation made of Thomasma's activities, either for the period from June, 1939 up to October of 1940, or prior to June of 1939?

A. The first investigation that was discussed came up at a time when Mr. Fidler took it up with me and suggested that he would like to have some investigations made, and that was at a time following the alleged early dates in the Interference, and then there was an indication, I believe, that Precision and Snap-On, either or both, I don't know the legal angle, were going to take testimony
936 on the basis of those alleged early dates; and then Mr. Fidler came to me, or called me, I don't remember

which, and he said that if those dates were established, that as far as maintaining our position in that Interference, we were through; that he couldn't believe the dates in the light of our knowledge of the art, he was very suspicious of them and he would like to have permission to employ an investigator to see what he could find out, to see what the picture really was.

Q. And an investigator was employed?

A. I believe so, yes.

Q. Now, do you know when that investigator was employed?

A. I would guess that that investigator was employed somewhere around three or four months before the Interference was finally settled.

Q. Now, do you know whether Larson's testimony was taken before or after your conference with Mr. Thomasma at Mr. Fidler's home?

The Witness: Whether Larson's testimony was taken before or after?

Mr. Freeman: Yes.

The Witness: Will you ask that question again?

Mr. Freeman: Read the question.

(Pending question read by the Notary.)

A. I think that it was after that Mr. Larson's 937 testimony was taken after our conference with Mr. Thomasma at Mr. Fidler's home.

Q. By the way, when Thomasma was discharged, were you the one that actually discharged him?

A. Yes, sir.

Q. Who else was present besides yourself and Thomasma?

A. I believe Mr. Allen was present. Is that correct? (Witness addresses Mr. Allen.)

I think Mr. Zimmerman was present.

Q. Can you tell me why the conference with Mr. Thomasma was arranged at Mr. Fidler's home instead of at your place of business or at Mr. Fidler's office?

A. Well, in the first place, Mr. Thomasma and Mr. Travis both had daytime jobs, and we tried to find a sort of an intermediate geographical point, because I lived way out on the North Shore and Mr. Thomasma I believe lived in Park Ridge, and I have forgotten where Travis lived, it was on the North Side somewhere, so it was just arranged I imagine for reasons of convenience.

Q. This investigation that you talked about a minute or two ago, did that include the investigation of George B. Thomasma and his activities?

A. I imagine it did. I am not familiar with the details of that investigation.

938 Q. And you likewise had that investigation include Larson?

A. I would be speaking for Mr. Fidler on that. I presume that it did, but I couldn't say definitely.

Q. Do you know what firm of detectives or investigators were used for making that investigation?

A. I accidentally one day met the head man of that outfit. I don't know if it was a firm or not. His name was Wise and Mr. Fidler introduced me to him out in the hall here. I was coming in and he was going out.

Q. Did you ever see a report made by the investigators of their investigation?

A. Never.

Q. Were you ever given a resume or the substance of the report, in any correspondence that you had with Mr. Fidler?

A. Not that I remember.

Q. Were you ever given an oral report of what the investigators found, by Mr. Fidler?

A. Some things, yes.

Q. Just what were those things, as best you recall?

A. Well, one was to the effect that Mr. Carlsen's name was not Mr. Carlsen. I remember that. I remember, also, that they investigated some of the purchasers of these early Precision wrenches and found some variations in that testimony. I believe one of the so-called purchasers 939 of those wrenches was located on a vacant lot.

Q. Was that a report given you after the taking of Larson's testimony?

A. Yes. It would have to be—or, either his or some of his witnesses.

Q. In other words, you had the testimony checked by investigators, after Larson had taken his testimony?

A. I presume Mr. Fidler did, but I mean we couldn't have checked a matter involving Mr. Larson's testimony before he would give it.

Q. There was an investigation, of Mr. Larson's activities, made prior to the taking of Larson's testimony?

A. That I don't know.

Q. Was there any investigation made of Thomasma prior to the date that Larson took his testimony?

A. There might have been, but I wasn't kept in touch in detail with what these investigators were doing.

Q. Any disbursements on the part of Mr. Fidler's firm would, of course, be included in your regular monthly statements rendered by the firm?

A. I think so.

Q. And do you recall whether or not you were invoiced more than once for detectives' investigations?

A. I would think we were. That is my recollection.

940 Q. That investigation ran over a considerable period of time, did it not?

A. Well, I believe I said I thought it was between three and four months.

Q. So that if the testimony were taken in October of 1940 and the investigation ran over a period of three or four months, there must have been some investigation, then, prior to the taking of the testimony?

A. I think the investigation was first suggested when these very early dates, of which we were suspicious, were first alleged. That is when I think it was undertaken.

Q. That is, shortly after the Preliminary Statement in the Interference was made available to your counsel?

A. I think that that would be it.

Q. And of course, you received a copy of the Larson Preliminary Statement, from your attorneys?

A. I presume so. I don't know.

Q. Or at least you received a report setting forth the various dates?—

A. That is right.

Q. —of conception and reduction to practice, from your attorneys?

A. That is right, yes. I was made familiar with it, yes.

Mr. Freeman: I might save a little time if I can get an answer now, from counsel for Plaintiff, as to whether

941 or not they have, in the papers that we have requested, reports rendered by the investigators from time to time?

Mr. Fidler: There were no written reports rendered. There were oral reports.

Mr. Freeman: I can still save some time, if you will advise me, Mr. Fidler, whether or not you have, among the papers we have requested, any memorandums that you pre-

pared as a result of the oral reports given to you by the investigators?

Mr. Fidler: I don't think that there are any such papers among the papers that I have collected. I do not understand that you requested any such papers.

Mr. Freeman: My letter didn't ask for it. I am going to ask for it now, and ask that any reports that you received from investigators, or any memorandums that you made recording any oral conferences or reports that you had with investigators, be produced.

(Whereupon a short conference, off the record, occurred between Plaintiff's counsel.)

Mr. Fidler: I will be glad to produce anything that I have in that respect. I know that I have no written reports of any investigators, but I think that I have some memoranda that I prepared from information given to me by them. Do you wish that information at this time or later?

Mr. Freeman: If you can get it conveniently, I would like it now, because I might save considerable time on the part of Mr. Wacker and everyone present if we have that information quickly.

(Whereupon an intermission of about 15 minutes was had.)

Mr. Fidler: As I stated, there were no written reports by investigators, and I now hand to counsel for defendants the written memoranda of such reports as they gave to me.

Mr. Lindsey: Those are your own personal notes.

(Mr. Fidler hands papers to Mr. Freeman.)

Mr. Fidler: They are mine.

The Witness: Mr. Fidler, I think I gave an erroneous statement as to when Zimmerman left us. Now, I could not even be sure of this statement, but I think Zimmerman left us in the summer of 1940. I said 1937 or 1938. I know it was after that. He was not there, as I remember, when the Interference hearings took place. So it was in the summer of 1940 I think, if I may correct that date, that Mr. Zimmerman left our employ. Is that O. K.?

Mr. Freeman: Q. Was there anyone else present at

Mr. Fidler's home besides yourself, Mr. Fidler, Mr. Thomasina and his attorney?

A. Krichiver and Mr. Travis.

Q. No one besides yourself and Mr. Fidler, connected with or associated with the plaintiff here?

A. You mean the Company? No. Travis was no longer in our employ and I think Mr. Fidler and myself were the only representatives of the company at that meeting.

Q. And what did Mr. Travis then tell you?

A. Well, Mr. Travis told us that Mr. Thomasma had called him up and wanted him to arrange for this conference.

Q. And what did Mr. Thomasma tell you at that conference?

A. Mr. Thomasma told us that, from information that he got, we were being framed, and that he would like to get the thing worked out on a basis where we wouldn't be hurt, if he could avoid hurting himself.

Q. Was there any report made of that conference with Mr. Thomasma?

A. Mr. Fidler I believe called me the following day and said just as a matter of record, he wanted me to dictate a report to him of what had taken place and transpired at that meeting, and I believe I dictated such a report.

Q. And you have a copy of that report available now?

A. I think so. I haven't it here myself. I presume our attorneys may have it.

944 Mr. Fidler: It is available.

Mr. Freeman: May I have it, please?

Mr. Fidler: I have produced a letter from Mr. Wacker to Davis, Lindsey, Smith & Skounts, to my attention, dated November 5, 1940, and I would like the witness to state whether or not this is the report that was referred to. (Handing papers to the witness.)

The Witness: This is the report, but there are some marginal notes on page 4 that are not mine. I presume they are Mr. Fidler's; I don't know.

Mr. Fidler: They are mine, put on after I had received the letter from you.

The Witness: That is the report of November 5th, 1940. (Mr. Wacker hands said document to Mr. Freeman.)

(Whereupon a short intermission followed while Mr. Freeman and Mr. Ooms examined said document.)

Mr. Freeman: Q. You knew prior to the conference with Mr. Thomasma on about November 1st, 1940, that Thomasma was connected with Precision Instrument Company, and you knew it more than a mere suspicion?

A. Well, we had seen those papers of incorporation, and we certainly suspected it. There is no doubt about that.

Q. And you knew, prior to your meeting with Mr. Thomasma in November of 1940, that the early date 945 alleged by Larson in his Preliminary Statement could not be substantiated?

A. That we knew?

Q. You, yes?

A. Before? Before this meeting with Thomasma?

Q. Yes.

A. That Larson's statements could not be substantiated, no, we did not know that.

Q. What did you mean, then, in this letter of November 5th, 1940, when you stated, "You and I both stated definitely that we know the facts in the case and stated them as we knew them to be"?

A. Well, we told Mr. Thomasma very definitely that we felt that he was involved in a frame-up and a double cross so far as we were concerned, and that at the time he was working for us, he sold us out and had gone to work in his spare time and evenings he had gone to work for Precision; that he had been sent up on service work by us to Snap-On in Kenosha and had taken advantage of his entire knowledge of the situation at our expense.

Q. And you knew all that prior to meeting with Mr. Thomasma?

A. Well, we believed that to be true, and we told him, we believed it to be true, and he admitted it.

Q. Did you discuss at that time, at Mr. Fidler's home, the theft of tools by Thomasma from your place of business?

946 A. I don't think so.

Q. That wasn't on Mr. Thomasma's mind at that time?

A. I don't think so.

Q. And he didn't want to clean his skirts, so to speak, of the theft of tools from your plant?

A. Well, I am not certain that he regarded that as a theft of tools, because he might have felt that he had taken demonstrators out, or something of that kind, I don't know, but that wasn't one of the things in our minds at the time of the meeting, I know that.

Q. You knew, at the time that you talked with Mr. Thomasma, the sum and substance of Larson's testimony which had been taken a week or so earlier, did you not?

A. I don't—What was the date that Mr. Larson's testimony was taken?

Mr. Freeman: I will give it to you in a minute.

The Witness: All right.

Mr. Ooms: Do you remember, Mr. Fidler?

Mr. Fidler: As I recollect, it started on the 24th of October and was completed, with some intermissions, on November 4th. That is, I am speaking of testimony taken on behalf of Larson, not the witness Larson's own testimony.

947 The Witness: And what was the date of our meeting?

Mr. Ooms: November 3rd.

Mr. Freeman: Sunday, November 3rd, 1940.

The Witness: A. Well, then, I would say that we did not know; I mean on the strength of the dates. I believe Mr. Larson was the last witness, is that correct?

Mr. Freeman: Q. Did Mr. Fidler explain to Mr. Thomasma the dates as alleged by Larson, and which had been given in the testimony taken, up to the time that you had your conference with Mr. Thomasma?

A. I think Mr. Fidler spoke to Mr. Thomasma about some alleged dates. Now, whether those were the dates alleged in the Interference or whether they were the result of testimony, I wouldn't know.

Q. Did Mr. Fidler show to Mr. Thomasma any photographic copies of any of Larson's paper exhibits in the case?

A. I don't think he did then, no.

Q. Did he ever show Mr. Thomasma any photographic copies of the exhibits produced on behalf of Larson, in your presence?

A. Well, later on, at a meeting in his office here, he had a photostatic copy of a drawing that Mr. Larson had signed and dated as of an early date, and I think that is the first time that I saw that drawing.

948 Q. How soon after the meeting of Sunday, November 3rd, 1940 was it that you again saw Mr. Thomasma?

A. The next time I saw him was in Mr. Fidler's office, I believe the latter part of November. As I remember it, it was November 28th. I am not sure. It was the only meeting, however, that took place at which Mr. Alberts and Mr. Joe Johnson and Mr. Allen and I were present. Mr. Fidler also, and Mr. Thomasma was then called in and asked some questions.

Q. You didn't see Mr. Thomasma between November 3, 1940 and November 28, 1940?

A. Whenever that last meeting was—I didn't see him between those meetings, no.

Q. Were you present prior to Mr. Thomasma making out his affidavit, which has been given to counsel for Snap-on, dated November 15, 1940?

The Witness: Was I?

Mr. Freeman: Q. Did you meet with Mr. Thomasma at any time prior to his executing the deposition-affidavit of November 15th, 1940?

Mr. Lindsey: Other than the conference at Mr. Fidler's on November 5th, 1940?

Mr. Freeman: Yes.

A. Yes, the only two times that I met with Mr. Thomasma in that period was first at Mr. Fidler's home and then at his office.

Q. You did receive reports that Mr. Thomasma spent some time in your attorney's office prior to the execution of the affidavit of November 15, 1940?

A. Well, I presume he saw him, I don't know where, whether he saw him at his home in the evening or whether he saw him at his office.

Q. Have you had occasion to see the affidavit of November 15, 1940?

A. I may have seen it. I wouldn't be sure. I know I saw the drawing and I know that Mr. Fidler did secure. I believe Mr. Fidler did secure such an affidavit. I don't remember whether I read it over in detail or not.

Q. You referred to a drawing. I take it that that is the drawing that Larson produced as his Exhibit 27 in the Interference?

A. I wouldn't know, but it evidenced his early date of conception.

Q. That is a drawing on a large brown piece of paper?

A. I think it was about so long and so wide (Witness indicates width and length of about 2 or 3 feet each.)

Q. And that is the drawing that Thomasma said he made?

A. That is the one.

Q. And you were informed that that drawing was made by Thomasma and not by some school boy, is that correct?

A. That is what Thomasma stated, that he had made the drawing himself.

Q. And you knew that Larson had testified that he had a school boy make the drawing?

A. I think that was—I was so informed by Mr. Fidler, as I remember it, yes.

Q. And you knew that at or about November 15, 1940, when Mr. Thomasma executed his affidavit?

A. Well, I knew it, I presume shortly thereafter.

Q. You knew that that drawing then produced by Larson as his Exhibit 27 was not in fact made as testified to by Mr. Larson?

A. Well, I knew that Mr. Thomasma said it wasn't, but I didn't know that that was a fact. I mean we weren't in any position at that time to prove the thing.

Q. Did you at any time see a drawing made by Thomasma, not the drawing that Larson produced as his Exhibit 27, but another drawing which your attorney used for the purpose of comparing the drawing, Exhibit 27, with the drawing that Thomasma produced?

A. I don't think so. I don't remember having seen such a drawing.

Q. Were you ever told by Mr. Fidler that there was no question but what the drawing, Exhibit 27, produced by Larson was in fact made by Thomasma?

A. I think Mr. Fidler believed that it was.

Q. And he so told you?

A. Well, I think he told me that he thought so.

Q. And he told you that shortly after November 15th, 1940?

A. I think that is correct.

Q. And he told you that prior to ever executing any of the agreements herein involved, Exhibits 4 and 6 which are attached to the pleadings filed in the Snap-On case?

A. That is right.

Q. And you relied upon Mr. Fidler's statement to you that the drawing, Larson's Exhibit 27, was not made in accordance with the sworn testimony of—

Mr. Lindsey: I object to that.

Mr. Freeman: Wait until I get through, please.)

Mr. Lindsey: I object to so much of the question at this time, because it is a misstatement of what the witness testified to.

Mr. Freeman: Wait until I ask the question, won't you, please? We will get along lots better. Now Mr. reporter, before I was interrupted, will you please read.

(Pending question read by the Notary.)

Mr. Freeman: Q. (Continuing) —Larson?

952 Did you get your full objection in there, Mr. Lindsey?

Mr. Lindsey: No. Go ahead and finish your question now. Have you finished your question?

Mr. Freeman: Yes.

Mr. Lindsey: I object to the question as being a misstatement of what the witness said.

Mr. Freeman: Q. Tell me what you understood, then, as a result of the information that Mr. Fidler gave you with respect to Larson's drawing, Exhibit 27?

A. Well, I felt that the drawing was certainly under strong suspicion.

Q. Merely suspicion?

A. That is correct.

Q. How about the use of the words "frame-up" that were given to you by Mr. Thomasma? Was that merely suspicion?

A. That was what he told us.

Q. And did you accept his story, that there was a frame-up, merely as suspicion?

A. Certainly.

Q. You didn't believe Thomasma, then?

A. I couldn't be sure. The difference between alleging something and being able to prove it are two very different things, and Mr. Fidler, in full answer to your 953 question, and Mr. Lindsey both cautioned Mr. Allen and me, on several occasions, before the meeting in his office, not to accuse anybody of either a frame-up or of perjury, because we might find ourselves sitting with a very fancy lawsuit in our laps if we did.

Q. Did they likewise caution you not to accuse Mr. Thomasma of stealing property belonging to your company?

A. No. I made that statement to him before I discussed it with them. That was of an entirely different and earlier time.

Q. When you say you made that statement to him, you are referring to the statement made by you to Mr. —

A. To Mr. Thomasma.

Q. —Thomasma, that he had taken property?

A. Yes.

Q. Not belonging to him?

A. Yes.

Q. What was the reason for your counsel admonishing you not to make any accusations against Mr. Thomasma?

A. Do you want to know as to how that conversation came up?

Q. That is all I am interested in, Mr. Wacker. Go right ahead.

A. All right. I will be very glad to tell you.

954 Mr. Fidler asked me to come down to his office and see him, as I remember it, which I did, and we discussed this whole situation, and I expressed I believe considerable impatience with a situation where it looked as if we were being pushed around, being put to considerable expense and apparently weren't in a position to do anything about it, and I asked him what we could do, in his opinion, to prove conspiracy or perjury, and he said that would be a very expensive proposition, to go out and secure that proof, if we could get it, and that the question was whether we wanted to go ahead and spend the money, to get the necessary proof, to make charges of that kind stick, but we were not then in any position to make them stick.

Q. When was that admonishment given to you?

A. Prior to our meeting with Mr. Alberts and Mr. Johnson, Mr. Thomasma, Mr. Fidler, Mr. Allen and myself, in Mr. Fidler's office.

Q. But subsequent to the execution of the affidavit of November 15th by Thomasma, is that correct?

A. I think so. I imagine so.

Q. In other words, you had Mr. Thomasma's sworn statement that he had made the drawing, Larson's Exhibit 27, at the time that you were given this caution signal by your counsel?

955 A. I think so.

Q. And you likewise had the reports of the detective's investigation of Larson and Carlson and Thomasma, at the time they gave you this caution signal?

A. Well, that in a very general way. I wasn't familiar with the detail of that.

Q. And you then had the sum and substance of the Larson testimony conveyed to you by your counsel?

A. That is right. As a result of which we were both strongly suspicious.

Q. And as a result of that suspicion, you met with counsel for Snap-On and Mr. Joe Johnson, president of Snap-On, is that correct?

A. I don't know if it was a result of that suspicion. I think that was the result of conversations between Mr. Alberts and Mr. Fidler.

Q. At the time you met with Mr. Joe Johnson and Mr. Alberts did you say that you were prediacting your meeting upon some suspicion that you had?

A. I don't remember using any such words. In fact, I think Mr. Fidler made the introductory remarks, Mr. Fidler, Mr. Alberts and Mr. Johnson. I don't believe I said anything then.

Q. Do you recall hearing anyone using the word
956 suspicion or any other word that would have the same significance, at the conference where you, Mr. Allen, Mr. Fidler, Alberts, Johnson and Thomasma were present?

A. I don't remember the word, the use of the word, but I do know that Mr. Fidler explained to Mr. Alberts and to Mr. Johnson that Mr. Thomasma had come to him with a story that he felt they ought to hear.

Q. And you were cautioned by your counsel that a case of perjury, that is; making it stick—

A. Proving it.

Q. —or getting a conviction, would require considerable proof?

A. Right.

Q. And likewise would involve considerable expense?

A. That is right.

Q. You know, do you not, that either the State or the Government will follow through on matters of perjury without any expense to you?

A. I imagine you would have to have proof, to get them to do that.

Q. You had Thomasma's affidavit, did you not?

A. That is right.

Q. You had that affidavit and you were relying on that affidavit when you called Mr. Johnson and Mr. Alberts over to Mr. Fidler's office, did you not?

957 A. No. We made no statements on behalf of that affidavit, because in the first place, we knew that Mr. Thomasma had been a disloyal employee of our own, and to the extent that his word could be substantiated with something that we weren't certain about at all.

Q. Do you want to say here now that at the time that you met with Mr. Joe Johnson and the others in Mr. Fidler's office, that you weren't certain that Larson had perjured himself?

A. I was very suspicious, but I couldn't prove it. They are two very different things, it seems to me.

Q. And yet your attorneys advised you not to accuse anyone of perjury?

A. That is right.

Q. Had the matter of perjury been discussed between you and your counsel prior to meeting with Mr. Alberts, Mr. Johnson and the others on November 28th, 1940?

The Witness: Had it been discussed?

Mr. Freeman: Yes.

A. Yes. I asked Mr. Fidler if he was in a position to prove it. He said he wasn't.

Q. And you were willing to rely on the information that you then had, which you say could not be proven in negotiating with Samp On and Precision for a settlement of this case?

A. Mr. Fidler felt, as I remember it, as a matter of courtesy between attorneys that Mr. Alberts should be allowed or permitted, if he so desired, to hear Mr. Thomasma's story.

Q. And you likewise heard Mr. Thomasma's story?

A. I was present, because Mr. Alberts I believe wanted to have his principal present, and Mr. Fidler suggested that Mr. Allen and I be there as well.

Q. You knew, did you not, that Thomasma produced another drawing to show that the author of the drawing that he then produced, and the author of Larson's Exhibit 27 were one and the same? Did you not?

A. No, I don't. There may have been some discussion of that, but I don't believe I saw the other drawing, if there was one. I wouldn't say if such a discussion took place or not; I don't know.

Q. Do you recall having any conversations with your counsel, with respect to the other drawing?

A. You mean the one that Larson had signed?

Q. No. The one that Mr. Thomasma had produced?

A. I believe comparisons of Mr. Thomasma's handwriting were made. I believe Mr. Fidler told me that.

Q. And who made those comparisons?

959 A. I believe a handwriting expert.

Q. And you were informed that the handwriting expert had concluded that whoever made the drawing produced by Mr. Thomasma made Larson's Exhibit 27, is that correct?

A. No. I was not advised to that effect. I was advised to the effect that there was similarity there, but that the handwriting expert had refused to commit himself.

Q. Do you know who that handwriting expert was?

A. No, I do not. I may have known his name at the time, but I don't know now.

Q. Did you get a copy of any report from the handwriting expert?

A. No, sir.

Q. Do you know whether your counsel ever got a report from the handwriting expert?

A. I do not. I know that he got verbal reports. I don't know if he got any written reports.

Mr. Freeman: I can again save some time, if counsel for Plaintiff will state whether or not the reports were in writing or oral from the handwriting expert, and if in writing, will they kindly produce such reports?

Mr. Fidler: There was no formal report rendered by the handwriting expert. He made some notes that don't mean anything to me, which he turned over to me and which I will be glad to produce.

(Whereupon a five-minute intermission was taken.)

Mr. Fidler: I now produce a yellow sheet, which is the only document that the handwriting expert handed to me. (Mr. Fidler hands said document to Mr. Freeman.)

Mr. Freeman: Will you read Mr. Fidler's statement, Mr. reporter.

(State of Mr. Fidler read by the reporter.)

Mr. Fidler: And it is the only thing in the nature of a written report that he gave to me.

Mr. Freeman: Mr. Fidler, can you give me the name of the handwriting expert you employed?

Mr. Fidler: It was Mr. Salmon or Sammon. I think his first name is Rutherford.

Mr. Freeman: We ask the reporter to mark, as Snap-On's Exhibit 11, a photostatic copy of the letter of Automotive Maintenance Machinery Company, dated November 5, 1940, referred to by the witness Wacker, also as Snap-On's Exhibit 12, the document produced by Mr. Fidler as being the only report given to him by the handwriting expert.

Mr. Fidler: The only written report.

Mr. Freeman: The only written report.

(Said documents were thereupon marked by the Notary

as Snap-On Exhibits 11 and 12, respectively, for identification.)

Mr. Freeman: We ask that a photostatic copy be substituted for Exhibit 12, subject, however, to counsel for plaintiff producing at the trial the original.

Mr. Fidler: Yes.

Mr. Lindsey: All of the originals will be produced at the trial. I should think we should have an understanding that you will produce the originals of anything that we have marked for identification, too.

Mr. Freeman: Right.

And as Snap-On's Exhibit 13, twelve sheets of paper, having reports thereon dated August 12, 1940, September 3, 1940, September 9, 1940, September 17, 1940 and September 30, 1940, produced by counsel for plaintiff.

(Said papers were thereupon marked by the Notary as Snap-On Exhibit 13 for identification.)

Mr. Freeman: Q. Did you ever receive a report from your Mr. Allen, who is here present, as to his visiting the Precision plant?

A. I think that he told me that he and one of our salesmen had stopped in Des Plaines to take a look at the place where Precision were making wrenches. I remember his having made such a statement to me.

Q. And do you recall the salesman's name?

962. A. I wouldn't be certain of that, no.

Q. There was no written report given you by Mr. Allen with respect to his visit to Precision?

A. Not that I remember.

Q. Have you had your records checked with respect as to whether or not a written report was given you?

A. If those records were checked, they were checked by Mr. Fidler, because he has all of our records down here.

Q. That is the records of your company in connection with the Interference, Larson v. Zimmerman, as well as this particular suit, have now been turned over to Mr. Fidler?

A. As far as I know.

Q. And such documents or papers were turned over recently?

A. Some of them. Others previously. I believe you recently asked for certain things and Mr. Fidler sent representatives of his office to our office to go through our files, and as far as I know, he has everything.

Q. When you say to go through your files, does that mean all of the files having to do with this interference and this case that were in your plant or in your office, have now been removed, to your counsel's office?

A. As near as I know. I don't know. I wasn't in my office, and I was here, when it was done, but I know files have been brought down here and I know previous to that time a considerable number of them were already sent 963 here. If there is a written report from Mr. Allen to me, I don't remember it, and if it exists, the chances are it is in my office.

Q. Would you mind during the luncheon hour, or before that, calling your office and finding out how much was paid to the handwriting expert for the services rendered by the handwriting expert?

Mr. Lindsey: We can give you that information, from our own records, if that will satisfy you.

Mr. Freeman: That will satisfy me, and likewise Mr. Lindsey, as long as you are getting it from your own records, which are perfectly acceptable to us; how much was paid to any detective agency or other investigators?

Mr. Fidler: Yes, surely.

Mr. Lindsey: No objection.

Mr. Freeman: Q. You were present on November 28, 1940, during an examination of Mr. Thomasma by Mr. Alberts here, at your attorney's office, is that correct?

A. No. I would say that Mr. Fidler asked the questions at that conference, not Mr. Alberts.

Q. In your presence?

A. Yes, sir.

Q. And did Mr. Alberts ask Mr. Thomasma anything?

A. I don't think that he did. I think it was discussed originally and I think Mr. Alberts indicated that it 964 would be all right with him for Mr. Fidler to ask the questions. I believe Mr. Fidler asked all of the questions and when he finished, he asked Mr. Alberts if he had any questions to ask and, as I remember it, Mr. Alberts said he did not.

Q. And what was the nature of that examination by your attorney, in your presence, of Mr. Thomasma?

A. Well, it was asking him as a generality what about this drawing, for one thing, and also about the development of the wrench and some of the facts that had come

out I believe in the taking of testimony with respect to the identification of certain castings and matters of that kind.

Q. And you heard Mr. Thomasma state that the drawing, Larson's Exhibit 27, was made by himself?

A. The one that Larson had signed as his and put the early date on, Mr. Thomasma said that he had made that, yes.

Q. And did you hear Mr. Thomasma say that his brother, who has an office in this building, saw the drawing being made by George B. Thomasma?

A. I do not remember that. He might have. I know that his brother was mentioned, I think—

Q. Was there any mention made at this conference on November 28, 1940, of the drawing made by Thomasma, which your attorney had used for purposes of comparison with Larson's Exhibit 27?

A. I don't remember any mention of a drawing—I remember comparison of handwriting, but I don't remember that another drawing was discussed.

Q. Tell us now just what you do remember with respect to the comparison of the handwriting.

A. Well, it was suspiciously similar, but that our handwriting expert had not definitely committed himself and did not want to, without making a further investigation.

Q. Did Mr. Fidler, in examining Mr. Thomasma as you state he did, tell Mr. Thomasma that he had had an investigation made by a handwriting expert, of Thomasma's handwriting?

A. I wouldn't be sure about that. I believe he told that to Mr. Alberts and Johnson. Whether Thomasma was in the room at the time or not, I don't know.

Q. Did he use the words "suspiciously similar," or did he?

A. I wouldn't remember that. I mean he indicated that he had reason to be suspicious of it.

Q. He did not say that whoever made the drawing, Exhibit 27, made the drawing or other document that he used for purposes of comparison, did he?

A. I don't remember anything about another drawing being used for purposes of comparison.

Q. That, you don't remember Mr. Fidler saying 966 that he had a suspicion, do you?

A. Well, I presume—well, he said it to me, anyway. I know he was suspicious of it.

Q. Were you in your own mind satisfied that Larson had falsified in his testimony prior to the time that you met with Mr. Joe Johnson on November 28, 1940?

A. Well, I thought there was something very peculiar in the State of Denmark, yes.

Q. Something rotten in Denmark, so to speak?

A. I was suspicious of that, very definitely, yes.

Q. And it was upon that suspicion that you said something had to be done about the Interference case?

A. I don't remember saying that something had to be done. We were doing everything we could do to protect ourselves.

Q. Well, tell me just what you were doing at about the time that you discovered that Larson's testimony was not the whole truth.

Mr. Lindsey: I object to the question, because the witness has not testified to that fact at all. I think it is time now to put the questions honestly. This thing of having sensational developments and telling the judge that we set testimony, serve notice for the day before Christmas, and those kind of things—I think we might just as well be honest about this course of the examination and what we say to the judge.

967 Mr. Freeman: Q. When did you learn, Mr. Wacker, that Mr. Larson's testimony was not the whole truth?

The Witness: You mean when did I become suspicious of it?

Q. When did you first learn that Larson's testimony was not the whole truth?

The Witness: When did I definitely learn it? Is that what you want me to say?

Mr. Freeman: No.

Q. I want you to tell me when you learned that Larson's testimony was not the whole truth.

A. Well, I had every reason to believe that it was not the whole truth when Larson conceded priority.

Q. You had reason to believe that it was not the whole truth, prior to that time, did you not?

A. I told you that I had been suspicious that it wasn't.

Q. And you had reason to believe, prior to the time that he signed a concession of priority, that his testimony was not the whole truth?

A. Yes, I was suspicious of that and believed that it wasn't.

Q. You received a copy of Mr. Lindsey's letter to Mr. Alberts dated December 19, 1940, did you not?

The Witness: I would like to see the letter.

(Document handed to the witness.)

968 A. I don't think I ever got a copy of that letter.

Mr. Freeman: Q. You testified that you were being pushed around and being put to great expense in connection with this Interference and couldn't do anything about it. Do you recall so testifying this morning?

A. Well, I remember objecting to Mr. Fidler that I thought it was a peculiar situation that we were being victimized by what appeared to be a phony story and had no way apparently of protecting ourselves and cutting off the expense on it.

Q. And what do you mean by being pushed around?

A. Well, I mean by being victimized.

Q. And who pushed you around?

A. I would think that Mr. Larson and his witnesses certainly pushed us around, in the light of subsequent developments.

Q. When did you tell Mr. Fidler that you were being pushed around?

A. Well, it was self-evident to both of us. I don't remember when we first discussed that. I think that was following the—I don't remember when that conversation took place. It was either—it might have been following the concession of priority. It might have been following Mr. Alberts' withdrawal from the case; I wouldn't be sure.

Q. And it might just as well have been prior to 969 the time you were cautioned by Messrs. Lindsey and Fidler with respect to making an accusation of perjury?

A. Well, they cautioned us prior to that meeting not to make such an accusation. I don't know—

Q. Well, this pushing around, it could have occurred prior to that admonishment by your counsel?

A. Well, I used a phrase. I don't know that I actually used those words. I used a phrase that we were being taken advantage of, the meaning that I had in mind.

Q. And when did you feel that you were being taken advantage of by Larson?

A. Well, we were suspicious of it at the taking of the testimony; I told you.

Q. When did you have your first suspicion with respect to Larson's dates?

A. Our first suspicion with respect to Larson's dates was when he first alleged them.

Q. And when the Preliminary Statement was available to your counsel?

A. That is right.

Q. And thereafter you began, through your counsel, to make an investigation by hiring investigators or detectives, is that correct?

A. That is correct.

Q. And it was thereafter that you ordered a Certificate of Incorporation of Precision, to see who were its incorporators?

A. I don't know if it was afterwards or before, because we were suspicious of Thomasma, his connection with Precision even before that, as you will remember.

Q. Even prior to the declaration of the Interference?

A. I think we had been told prior to the declaration of the Interference that Thomasma was connected with this Des Plaines outfit. I believe that is so.

Q. Did you receive a report from your attorney Mr. Fidler of his conference with Mr. Alberts on November 21, 1940, in this office?

A. Not in detail. I believe I knew that there was such a conference.

Q. Did you know the purpose of such conference?

A. The only purpose that I ever knew with respect to that conference was to permit Mr. Alberts to become acquainted with Mr. Thomasma's story.

Q. Was that report in writing from Mr. Fidler to you?

A. I don't think it was. I don't recall it.

Q. Did you know prior to the conference between Mr. Fidler and Mr. Alberts, that Mr. Fidler was going to arrange such a conference and present to Mr. Alberts the facts, or to acquaint him with the facts as presented to you or to your counsel by Mr. Thomasma?

971 A. I don't remember that. I would doubt it, but I don't remember it.

Q. Do you recall now the report given to you as a result of the November 21, 1940, conference between Alberts and Fidler?

A. A verbal report.

Q. What is the sum and substance of it?

A. That such a meeting had taken place and as I remember it, as a result of that meeting, Mr. Alberts was going to consult Mr. Johnson to see if the arrangements could be made for them to hear Thomasma's story.

Q. Did you get any—do you recall any report given to you by Mr. Fidler, as to what Mr. Alberts said on November 21, 1940?

A. No.

Q. At his conference.

A. No. I never had a report going into the detail of that.

Q. Did you get any report from Mr. Fidler as to what he told Mr. Alberts?

A. No.

Q. The only report that you can recall is that there was some meeting on November 21, 1940?

A. There was some meeting and I believe it led up to the subsequent meeting.

972 Q. And what was the purpose of the subsequent meeting which was held on November 28, 1940?

A. The purpose of that was to permit Mr. Alberts and Mr. Johnson to hear Mr. Thomasma's story.

Q. Why were you present at that meeting, if you recall?

A. Why was I present?

Q. Yes.

A. Why, because Mr. Fidler I believe suggested it.

Q. And Mr. Allen was likewise present?

A. Mr. Allen was present.

Q. Do you recall any of the statements that you made either to Mr. Johnson or to Mr. Alberts, at that meeting?

A. No, sir.

Q. You did talk to Mr. Johnson, did you not?

A. I said, "How do you do" to him.

Q. Did you talk to him at all about the Interference?

A. I don't think so.

Q. Did you tell him at all how you felt?

A. I do not recall telling him.

Q. Did you tell him about the suspicions that you had with respect to Larson's testimony?

A. Well, I think that Mr. Fidler's questioning of Mr. Thomasma clearly brought that out. I didn't have to add to that.

Q. You said nothing at all?

973 A. Not that I recall.

Q. Do you recall Mr. Johnson telling you that his company had always conducted its business on a high plane?

A. Yes, sir.

Q. And what was your answer to that?

A. I don't think I made any answer to that.

Q. Did you talk at all to Mr. Johnson?

A. Well, I remember saying, "How do you do" to him and "Goodbye," and most of the time that I was there I listened.

Q. You were perfectly willing to let Mr. Fidler do the talking for you, at this conference?

A. That is right.

Q. And whatever Mr. Fidler said, you, of course, by your silence said O.K. to, is that correct?

A. I didn't object to anything he said, that I remember.

Q. And Mr. Fidler was then speaking for you and for the plaintiff in this case?

A. As nearly as I know and mostly—the only speaking that I remember was asking questions.

Q. Do you recall Mr. Fidler saying that something had to be done about this Interference?

A. No, I don't think so, at that time.

Q. Do you recall Mr. Alberts telling Mr. Fidler that he would certainly recommend that a concession of priority be given by Larsen to Zimmerman?

974 A. That Mr. Alberts said that?

Q. Yes.

A. No, I do not.

Q. Do you recall Mr. Fidler saying that there would have to be more than a mere concession of priority in this case?

A. No, I don't remember anything—

Q. Do you recall Mr. Fidler saying that your company had spent a great amount of money in investigations?

A. No, I don't recall that.

Q. Do you recall Mr. Fidler saying that you would not be satisfied with a concession of priority?

A. No, I don't think the question of concession of priority was mentioned.

Q. Do you recall Mr. Alberts stating that he would certainly withdraw as counsel for Larsen?

A. Yes, he definitely said that, that if Mr. Thomas's

story was substantiated, that he would withdraw as attorney for Precision and Larson.

Q. What else do you recall that Mr. Alberts stated, at this conference?

A. Well, that is about all that I recall that he stated.

Q. And all you recall that Mr. Johnson said was that his business was conducted on a high plane?

A. Well, when he came in, he said he was entering the— that he wanted us to realize that he had gotten into this thing with clean hands, that Snap-On had always conducted their business on a high plane, and then when he left, after he heard the story of Thomasma, he said that if Mr. Thomasma's story is true, this thing smells to the high heavens. Now, those are the two things that I remember Johnson saying.

Q. Do you recall Mr. Alberts asking Mr. Thomasma whether Thomasma had ever acquainted either Alberts or Snap-On that he was connected with Precision?

The Witness: Would you repeat that, please?

Mr. Freeman: Read the question.

(Pending question read by the Notary.)

A. No, I don't.

Q. After the conference of November 28, 1940, tell us who dictated the policy as to what plaintiff wanted from Larson.

The Witness: What he wanted from Larson?

Mr. Freeman: Yes.

A. Well, Mr. Alberts had withdrawn from the case at that previous meeting, so he was no longer the attorney of Precision, in accordance with his statement to us, so we obviously did not know whom to talk to about the thing. So as I understand it, the next thing that happened later, some days later, during Mr. Fidler's illness at his home, Mr. Hobbs got in touch with him and suggested a settlement. That was the information that I received from Mr. Fidler.

Q. Now, just tell me who made the suggestions on behalf of you or your company as to what you wanted Larson to give you as a result of those—

A. I think the original suggestions were made by Mr. Hobbs, suggesting a settlement.

Q. Now, over and above the suggestion of a settlement, who stated what the terms of the settlement were going to be?

A. As I understand it, Mr. Hobbs originally made certain suggestions that later on apparently his clients were not willing to go through with.

Mr. Freeman: Did Hobbs ever—

Mr. Lindsey: I don't think the witness finished his answer.

Mr. Freeman: Go right ahead, Mr. Witness.

The Witness: Well, I don't think that—Mr. Hobbs, in his original suggestion, suggested the payment of a royalty.

Mr. Freeman: Q. That was Mr. Hobbs' suggestion?

A. In this letter that I believe that he wrote to Mr. Fidler.

Q. And who dictated the policy of the settlement?

A. You mean the final settlement?

Q. Yes, in your behalf or in your company's behalf.

A. I did, in connection with Mr. Fidler and Mr. Lindsey, I received their advice and finally, to get the thing 977 wound up, we agreed to this settlement.

Q. Do you happen to have a copy of the letter that you just testified to, where Mr. Hobbs suggested paying a royalty?

A. I haven't a copy of it. I think Mr. Fidler has a copy of it or has the previous letter, I am not sure.

Q. Are you satisfied that there was such a letter and that the suggestion with respect to paying a royalty came from Mr. Hobbs?

A. That is my understanding.

Q. And who gave you that understanding?

A. I think I saw the letter.

Q. And who suggested that the gauge application of Mr. Larson be assigned to the plaintiff here?

A. Who suggested what?

Q. That a gauge application of Mr. Larson's be assigned to plaintiff?

A. Well, I think that came out of our conferences together. I don't know who made the first suggestion on that.

Q. Mr. Hobbs never suggested that his client Larson turn over a Larson application on a gauge that was not involved in this Interference, did he?

A. I think that when Mr. Hobbs informed us that his client did not have the money to pay royalties, that that was thought of in lieu of royalties. That is my recollection. 978

Q. When Mr. Hobbs said that his client did not

have any money to pay a royalty, was that in a letter form or orally from Mr. Hobbs?

A. I don't recollect. I don't know if Mr. Fidler told me that. I imagine that was a result of telephone conversations or conferences that took place between Mr. Fidler and Mr. Lindsey and Mr. Hobbs.

Q. The letter you are talking about, was it something that occurred prior to the time of the settlement or a royalty to be paid thereafter?

A. Well, it was a royalty to be paid on all unfilled orders; as I remember it.

Q. Do you recall requesting that Snap-On pay to plaintiff here the difference between your selling price and Snap-On's selling price of some two or three dollars per torque wrench?

A. No.

Mr. Lindsey: May I ask, are you still referring to the letter now, Mr. Freeman?

Mr. Freeman: No.

The Witness: A. No, I don't recall any such discussion.

Mr. Freeman: Q. Do you recall asking Snap-On to pay some money to your company, not for the future, but for the past?

A. I don't recall asking Snap-On to pay us any-979 thing, because—

Q. Do you recall—Pardon me.

A. It was a case—it was between ourselves and Precision, at that time.

Q. Do you recall whether or not your attorney submitted a joint agreement on the part of Snap-On and Precision, looking for a settlement of this case?

A. Ultimately, yes.

Q. Do you recall Mr. Alberts advising your counsel that Snap-On did not want to be a party directly tied up with Precision in making any settlement with your company?

A. I don't recall that specifically. No. I think that Mr. Alberts had clearly withdrawn from the case and so we were under the impression that he wanted out on that, but I don't know—

Q. There is no question in your mind but what Mr. Alberts wanted anything to do with the Interference or the Larson application after he found out that there was

something phony about the Interference dates, is that correct?

A. That was his statement.

Q. And you understood it that way, did you not?

A. Well, I accepted it as such.

Mr. Lindsey: That is another very misleading statement, the question. Read the question, will you, Mr. Reporter.

Mr. Freeman: I wish to say I don't mean to mis-
980 lead him.

(Question read by the Notary as follows:

“Q. There is no question in your mind but what Mr. Alberts wanted anything to do with the Interference or the Larson application after he found out that there was something phony about the Interference dates, is that correct?”)

Mr. Lindsey: That is, if he found out it was phony, the witness testified.

Mr. Freeman: It is 12:30, gentlemen. How about lunch-
coff?

The Witness: Mr. Lindsey just called attention to the fact that I had previously testified that Mr. Alberts had said that if this was found to be—if Thomasma's story was found to be true, then, he would withdraw from the case.

Mr. Freeman: Q. And when you were advised that Mr. Alberts did withdraw, you then knew that the story that Larson's testimony was phony was correct, did you not?

The Witness: Wait a minute.

Mr. Lindsey: That is another misleading question, because Alberts never did withdraw.

The Witness: I was told officially that Mr. Alberts had not withdrawn, but that Mr. Hobbs was representing Precision.

Mr. Freeman: Q. And who told you that?

A. Mr. Fidler.

Q. That Mr. Hobbs was representing Precision?

A. Mr. Fidler and Mr. Lindsey, in these negotiations which he had suggested toward a settlement.

981 Q. Do you recall Mr. Alberts telling you on November 28, 1940, when he entered into a conference with you and your attorneys, that he was there representing Snap-On solely?

A. I recall his saying that, that his first loyalty, if you like, was to Snap-On, I don't remember the words he used,

but I got that impression, that he said he was there representing Snap-On, yes.

Q. And that he was not representing Precision or Larson at that conference?

A. Well, he had been up until then, and he said that he would cease to represent them if Thomasina's story proved to be true.

Q. And you so understood it?

A. Yes.

982 Mr. Lindsey: I have had our bookkeeper investigate the books and he reports that he paid to the investigator, Mr. Wise, the sum of \$4,704.35, in connection with his investigation, concerning which the witness was interrogated this morning.

The books also show, it is reported to me by our 983 bookkeeper, that the handwriting expert, Mr. Salmon, was paid the sum of \$50.00 for services rendered in connection with the matter, concerning which the witness was interrogated this morning.

Mr. Freeman: Mr. Lindsey, I wonder if we might get the date when Mr. Salmon was paid and when that service was rendered, and likewise by the investigator who was paid the sum of \$4,704.35?

Mr. Lindsey: Over what period of time?

Mr. Freeman: Yes, starting when and terminating when?

Mr. Lindsey: Yes.

The first payment was made to Mr. Wise on August 13th, 1940 and the last payment to Wise on January 6, 1941.

Mr. Salmon's bill was paid December 28, 1940.

Mr. Freeman: Q. I take it that Mr. Fidler arranged for Mr. Thomasina to be present on November 28, 1940?

A. I presume so, yes.

Q. You had nothing to do with it?

A. No. That was November 28th, that you mentioned?

Mr. Freeman: That is right.

The Witness: Yes.

Mr. Freeman: Q. The only meeting you arranged as between Fidler and Thomasina was the one that was 984 had on November 3rd at Mr. Fidler's home?

A. The one that Travis approached me on, yes.

Q. Do you recall at the meeting of November 28th, 1940, Mr. Fidler telling Mr. Alberts that AMMCO, or your

company, had investigators out on this matter and had spent some five thousand dollars in making that investigation, and that he would not be interested in just a concession of priority?

A. I am sure that no such statement was made.

Q. Do you recall Mr. Fidler saying that Mr. Wacker had gone so far in this matter that he wanted things settled right away?

A. No. Not at that meeting.

Q. And that if it was not settled right away, he would have to unleash the dogs?

A. No.

Q. Do you recall Mr. Fidler telling Mr. Alberts that he had already interviewed the Patent Office with respect to Larson's testimony?

A. No.

Q. Or that he had had someone else interview the Patent Office with respect to Mr. Larson's testimony?

A. No, sir.

Q. Do you recall Mr. Fidler stating that "Mr. Wacker wants us to report the matter to the District Attorney, unless we can get a satisfactory settlement"?

A. No, sir.

Q. No such statements were made?

A. Not in my hearing, no.

Q. Was there anything said about a District Attorney?

A. Not to my knowledge.

Q. Was there anything said about reporting Larson's testimony to the Patent Office?

A. No, sir.

Q. Or that it might be reported to the Patent Office?

A. No.

Q. Or that it was reported to the Patent Office?

A. No, sir.

Q. What took place at this conference on November 28th, 1940, over and above the examination of Mr. Thomsma by Mr. Fidler as you have already testified; what else was said?

A. I don't think anything of importance.

Q. Was anything talked about a settlement?

A. Not at that time, no.

Q. Was there anything said by Mr. Fidler or yourself as to what the plaintiff in this case wanted?

A. No, sir.

Q. (Continuing) From either Larson or Snap-On?
986 No, sir.

Q. Nothing at all?

A. Not a thing.

Q. What was the purpose of this meeting on November 28th, 1940?

A. Well, the purpose of the meeting was to permit Mr. Alberts and Mr. Johnson to make up their own minds as to whether in their opinion Mr. Thomasma was telling the truth or whether he wasn't.

Q. I believe you testified this morning that you never saw a copy of Mr. Lindsey's letter to Mr. Alberts dated December 19th, 1940, and I now ask you whether you ever saw a copy of Mr. Alberts' letter to Mr. Lindsey dated December 19, 1940?

Mr. Lindsey: Show him the letter.

Mr. Freeman: You have the original, Mr. Lindsey. Why don't you give him that one?

Q. Mr. Wacker, I will hand you a carbon copy of the letter, in the absence of the original, and you might look at it and then answer the question. (Mr. Freeman hands yellow sheet to the witness.)

A. No. I never saw a copy of that letter, I can testify, without reading it, because I don't remember any letter with the phrase "Goodwill toward all mankind" in it. I think I would have noticed that.

987 Q. This morning Mr. Lindsey said that he had nothing to do with this case until I believe December 10th, 1940. Did you have anything to do with getting Mr. Lindsey personally into this case?

A. No. The way that happened was this: Mr. Fidler was at home with a bad back, and following the meeting of November 28th, Mr. Fidler was confined to his home and at that time Mr. Lindsey came in; first because of Mr. Fidler's disability and secondly, because I think that we wanted his advice when it came to the question of settlement.

Q. Do you recall now who suggested that Larson turn over to Snap-On his Application covering a gauge, which application was not involved in the Zimmerman-Larson Interference?

A. No, sir. Those negotiations were conducted with Mr. Hobbs and I wasn't in on them, although they reported

to me from time to time as to the progress or lack of progress that was being made.

Q. And any changes or concessions made from time to time, that is, after an agreement was submitted to Mr. Hobbs and he objected to it, those objections were made known to you?

A. Well, I don't know if all of his objections were made known, but I know before we made any further concessions on our part, I am sure they were made known.

Q. You gave approval to any concessions that 988 might have been made by your counsel in that case?

A. That is right.

Q. To Mr. Hobbs?

A. I believe that to be so. I think they took up everything of that nature with me.

Q. And you knew what was asked for in the first agreement that was submitted, and I use the word agreement as a proposed agreement?

A. Yes.

Q. You knew that?

A. That is—

Mr. Lindsey: That is the one that Mr. Hobbs submitted to us?

The Witness: Yes.

Mr. Lindsey: Is that the one you are speaking of?

Mr. Freeman: Well, as long as you have talked about an agreement submitted by Mr. Hobbs, have you a copy of it?

Mr. Lindsey: Let us get the record straight on that, Mr. Freeman.

The Witness: You have a copy of that letter.

Mr. Freeman: What I have asked for is the—I take it, from your explanation, Mr. Lindsey, that Mr. Hobbs submitted an agreement to you people?

Mr. Lindsey: He submitted a proposition, yes.

Mr. Freeman: Well, whether it is a proposition, 989 agreement or what not, I wonder if I might have what he submitted to you?

Mr. Lindsey: I would be glad to give you anything we have on that.

The Witness: It was a letter of suggestion, as I remember it.

Mr. Freeman: May I have a copy of it?

(Mr. Fidler hands document to the witness.)

The Witness: Yes.

Mr. Fidler: I hand to counsel for defendants the original of a letter dated December 6, 1940, and purporting to be signed by Mr. M. K. Hobbs and addressed to me, entitled The Larson-Zimmerman Interference.

The Witness: Is that the first time you heard from Mr. Hobbs?

Mr. Lindsey: I would like to ask opposing counsel if they have a copy of that letter that Mr. Fidler just identified?

Mr. Freeman: Yes, sir, we have.

Q. There had been, prior to December 6, 1940, the date of Mr. Hobbs' letter to Mr. Fidler, a conference as between Mr. Hobbs and Mr. Fidler with respect to the Interference?

The Witness: Prior to the date of that letter?

Mr. Freeman: Yes.

A. Well, I think I have since heard that there was. 990 That was during the period of Mr. Fidler's illness and

I think that Mr. Hobbs either telephoned him there or called on him, but I am not sure.

Mr. Lindsey: Do you want a copy, you say?

Mr. Freeman: No.

Mr. Lindsey: I would like to ask the reporter to mark for identification the Hobbs letter of December 6, 1940, to Mr. Fidler, as Automotive's Exhibit 11.

(Said document was thereupon marked by the Notary as Automotive Exhibit Number 11 for identification.)

Mr. Freeman: Q. Did you get a copy of the letter dated December 6, 1940, from your attorneys? And I am referring to the letter that has just been offered by Mr. Lindsey as Automotive Exhibit Number 11.

A. I don't remember if I did or not. I doubt it.

Q. You were informed of the proposal contained in the letter of December 6, 1940?

A. Yes, sir.

Q. Do you know when the first agreement was submitted to Mr. Hobbs, looking forward to a settlement, and I am now referring to the more or less formal document as distinguished from a mere letter.

A. No, I do not. I don't even know who submitted it.

991 You mean one submitted by Mr. Hobbs or by Mr. Fidler and Mr. Lindsey to Mr. Hobbs? I would not know how that originated.

Q. Mr. Hobbs never suggested that Larson turn over to Automotive his application covering a gauge, did he?

A. Not to my knowledge. I don't know what Mr. Hobbs suggested in their verbal conference.

Q. Were there some suggestions by Mr. Hobbs as a result of a verbal conference, over and above the proposal contained or outlined in the letter of Mr. Hobbs dated December 6, 1940?

A. I do not know. Those negotiations were carried on between the attorneys, and I don't know what the—

Q. Do you know where the suggestion came that Mr. Larson assign the application involved in Interference to Automotive?

A. It came in those conferences between the attorneys. I don't know who first made it.

Q. There was nothing in the letter of December 6, 1940 that Larson was to assign and convey title to his application to the plaintiff here; is that correct?

A. I don't see anything in this letter to that effect.

Q. Do you know who made the suggestion that Larson assign the application that was involved in Interference to Automotive?

A. Well, that came as a result of concession of priority, didn't it?

Q. You understand, do you not, that had you gone on through with that Interference and you would have prevailed and had won the Interference, that that still would not have given you title to the Larson patent or to his application?

A. We would have gotten the claims involved.

Q. You got more than the claims that were involved, as a result of this settlement, did you not?

A. We got \$500.00 and I think we got an additional application.

Q. Over and above the claims that were involved in the Interference, you got the Larson patent application covering subject matter which was not involved in the Interference, did you not?

A. Well, I would not be dead sure about that. What I would be sure of would be that Mr.—no. I think that is probably true. I think there were certain claims that were not involved in the Interference. I believe that is correct, now. I am not a patent attorney and I haven't thought of it in that way.

Q. And you do know that had the Interference gone on through and you would have prevailed, that is, that Zimmerman would have gotten the award of priority, you still would not have gotten title to the Larson application?

993 A. Well, as I said, I haven't thought of it that way, but that may be so.

Q. Whose suggestion was it that in the settlement agreement there be a provision that Larson and Precision would not question the validity or any of the Zimmerman patents issuing upon the two applications involved, did that come from Mr. Hobbs?

A. I do not imagine so. I imagine that that was one of our demands.

Q. And likewise, you made a similar demand upon Snap-On?

A. Certainly, I imagine so. That is my recollection. I did not personally make the demand.

Q. What were you giving Larson in return for his assigning the patent application involved in Interference to Automotive?

Mr. Lindsey: May the witness examine the contract?

Mr. Freeman: Yes.

Mr. Lindsey: I think that is the best evidence. It speaks for itself.

Mr. Freeman: I have a photostatic copy of it and it will be a little easier for him to read. Are you getting your original?

Mr. Fidler: I thought you did not want them.

(Mr. Fidler hands documents to the witness.)

994 The Witness: You mean what we gave to Larson and Precision or to Snap-On?

Mr. Freeman: Q. First, go ahead and tell us what you gave to Precision and Larson, and then afterwards tell us what you gave to Snap-On.

A. Well, first of all, it seems to me that we provided for the termination of the Interference.

Mr. Lindsey: On further consideration, I am going to instruct the witness that he is not required to answer that question without an order from the Court. The contract speaks for itself and the witness is not a lawyer, he is not a patent attorney, he is not in position to interpret a contract, and that is one of the issues for the Court to decide.

Mr. Freeman: So the record is clear, I did not ask you about the contract, did I? Mr. Lindsey is the one that sug-

gested that you look at the contract before you answered my previous question, that is correct, is it not, Mr. Wacker?

The Witness: Well, you asked me for an interpretation of what we gave to them under this contract.

Mr. Freeman: I asked you what you gave in return to Mr. Larson for the request that you made of him that he turn over to you the application involved in the Interference.

995 The Witness: Well, that is a part of this agreement.

Mr. Freeman: And Mr. Lindsey is the gentleman that handed you the agreement and asked you to look at it before you answered my question, is that correct?

The Witness: That is right.

Mr. Lindsey: The contract speaks for itself, and I will again advise the witness that he is not required to answer Mr. Freeman's first question without an order of the Court.

Mr. Freeman: Q. Tell me now, Mr. Wacker, what you understood, then, aside from the contract that you were giving to Mr. Larson in return for the request that he convey to you the Larson Application involved in Interference, aside from what is stated in the agreement.

Mr. Lindsey: I will again instruct the witness that he is not required to answer that question without an order of the Court.

Mr. Freeman: Q. What was your understanding during the negotiations prior to the execution of this contract that you were giving to Mr. Larson and Precision in return for your request that he assign to you or to your company the Larson Application involved in Interference?

Mr. Lindsey: I again make the same observation.

Mr. Freeman: Q. You testified a minute or two ago that you were letting Larson out of the Interference, is that correct?

996 A. I said that we provided for the settlement of the Interference in this agreement.

Q. And didn't you say that you were letting him out of the Interference?

A. I don't think I used those words, no.

Q. You did say, then, that you were settling the Interference?

A. I said that this agreement provided for the settlement of the Interference. I believe those were the exact words I use.

Q. Was that a consideration in your mind that justified you in asking for an assignment of the Larson Application?

Mr. Lindsey: The same observation.

Mr. Freeman: And the same instructions not to answer, Mr. Lindsey?

Mr. Lindsey: Without an order of the Court. I can't instruct the witness not to answer.

Mr. Freeman: You are not answering, on advice of counsel, is that correct?

The Witness: That is correct, yes.

Mr. Freeman: Q. You were kept informed as to what was going on from time to time, during the period of the negotiations with Precision and Larson, by your attorneys?

A. That is right.

Q. And you O.K.'d any concessions or giving up any points in your demands first, made, before they were actually removed from the proposed agreements your counsel?

A. I think before they made any concessions, they talked to me about it and secured my approval.

Q. So that you were kept pretty well informed as to what was being requested or asked for in your behalf?

A. Yes, I believe that is so.

Q. And any changes in the requests or lessening of the requests, you approved such lessening of the requests, did you not?

A. Well, I approved any changes in requests, because this original thing of Mr. Hobbs, that they were to pay us a royalty, was never gone through with at all, and the thing started all over. That collapsed and then they started all over, afresh from there, apparently, it wasn't merely just the same as if the same agreement was being adjusted as they went along, that wasn't the fact.

Q. The request or proposal as outlined in Mr. Hobbs' letter of December 6th was not acceptable to you?

A. No.

Q. And then I understand negotiations started over again, additional requests were made, is that correct?

A. No. I think that one of the things was that—my recollection is that, at a subsequent date, it developed as I testified earlier, that Precision was not in a position to pay royalties.

Q. Do you recall the proposition outlined in a letter from Mr. Harry Alberts, dated December 16, 1940?

The Witness: On whose behalf?

Mr. Lindsey: May he see the letter, Mr. Freeman?

Mr. Freeman: Yes. You have the original, Mr. Fidler.

Mr. Lindsey: Do you have it?

Mr. Freeman: Get the original and it will be easier for Mr. Wacker to read.

Mr. Fidler: Maybe it is here. I don't know. Dated what, the 16th?

Mr. Alberts: The 16th.

Mr. Freeman: The 16th.

Mr. Alberts: No. That is the 17th.

Mr. Lindsey: That is the 17th, Mr. Fidler.

Mr. Fidler: I produce the original of a letter dated December 17, 1940, from Mr. Harry C. Alberts to Davis, Lindsey, Smith & Shonts, attention of Mr. Raymond E. Fidler, Re: Precision Torque Wrenches—your submitted Settlement Agreement File 11580. (Mr. Fidler hands said document to Mr. Freeman.)

(Mr. Freeman handed said document to the witness.)

A. No. I never saw this letter.

Mr. Freeman: Q. Do you have a copy of the proposed agreement submitted by Messrs. Lindsey and Fidler to Precision and Snap-On at Mr. Hobbs' office on December 13, 1940?

Mr. Lindsey: We are getting it, now.

(Whereupon a short intermission followed.)

Mr. Freeman: This is off the record.

(Discussion off the record.)

Mr. Freeman: Will you read the question?

(Pending question read by the Notary.)

The Witness: A. Well, I don't think I have a copy, if that is the question.

Mr. Lindsey: We have, and are willing to produce, a copy of the draft of agreement referred to. Do you wish a copy of it, Mr. Freeman?

(Mr. Lindsey hands document to Mr. Freeman.)

Mr. Freeman: Q. Did you have a copy submitted to you of the agreement, that is proposed agreement that I now hand you which was furnished to me by your counsel Mr. Lindsey?

(Mr. Freeman hands document to the witness.)

A. I don't think I ever saw a copy of this. If I did, I don't remember it.

Mr. Freeman: We ask that the reporter mark for iden-

238
Report of Proceedings.

tification as Snap-On's Exhibit 14 the proposed agreement submitted on December 13, 1940.

(Said document was thereupon marked by the Notary as Snap-On Exhibit Number 14 for identification.)

• Mr. Freeman: Q. Did you have anything to do with the request or the demand that Larson turn over to you, or that Snap-On turn over to you or your company, any of the moneys that had been accumulated and in Snap-On's possession, as a defense fund?

A. No. I am not familiar with any such request.

Q. You knew that there was such a request made at one time?

A. No, I don't think I did.

Q. You knew that there was a defense fund, that is, moneys belonging to Larson and retained by Snap-On?

A. I remember there was a provision for such a fund in the copy of the contract that I saw, that was originally drawn between Larson and Snap-On, but I wasn't familiar with their fund or whether there was any money in it or whether there wasn't. That had never come to my attention.

Q. Do you recall when you first saw the contract between Snap-On and Larson, that provided for a defense fund?

A. I imagine that was at the time of the Interference, about then, I would think when that was made available to us. I am not sure.

Q. Do you have a copy of another proposed agreement submitted to Snap-On and likewise another agreement submitted to Precision and Larson on December 20, 1940?

Mr. Lindsey: Yes, we have, Mr. Freeman, in answer to your question directed to me, and we will be glad to produce them. I may say, I am not sure when it was submitted, but we recognize that you mean the two that we are handing you now.

(Mr. Fidler hands documents to Mr. Freeman.)

Mr. Freeman: We offer as Snap-On Exhibit 15 a copy of the proposed agreement as between Automotive and Snap-On, submitted on or about December 20, 1940.

(Said document was thereupon marked by the Notary as Snap-On Exhibit Number 15 for identification.)

Mr. Freeman: And as Snap-On Exhibit Number 16, a

copy of proposed agreement between Automotive and Precision and Larson, likewise submitted on or about December 20, 1940.

(Said document was thereupon marked by the Notary as Snap-On Exhibit Number 16 for identification.)

Mr. Freeman: Do you have a copy, Mr. Lindsey, of the first proposed assignment covering the Larson Application, from Larson to Automotive?

I want the one that was proposed and included the 1002 right to improvements which was not executed.

Mr. Lindsey: Mr. Fidler informs me that we never prepared or submitted an assignment requiring the assignment of future inventions, Mr. Freeman.

Mr. Freeman: Of improvements?

Mr. Lindsey: No. I don't think we ever prepared that kind of an assignment, if you are referring to future improvements. If you are referring to what was disclosed in the Application, yes.

Mr. Freeman: Improvements upon what was disclosed in the Application?

Mr. Fidler: No.

Mr. Lindsey: No. We never prepared such an assignment.

Mr. Freeman: Then, do I understand, Mr. Lindsey, that the only assignment that you prepared was the one that was actually signed by Larson and Precision Instrument Company?

Mr. Lindsey: No. We prepared another assignment, but if this is the assignment that you have in mind, I have no objection to your examining it, but there is nothing about improvements upon the inventions disclosed in the Application. If you will show me the carbon, I will be glad to run down another copy, if we have it.

Mr. Alberts: I am going to my office, now, and look for it.

1003 Mr. Lindsey: We will be very glad to cooperate.

I may say that Mr. Fidler is continuing to look up such an assignment, to see if one exists. At least, there is not one that we have prepared, is that right?

Mr. Fidler: Here is the only one that I know of.

Mr. Lindsey: That is all right.

Mr. Alberts: I have a copy or two of assignments at my office I am going to get.

Mr. Lindsey: Here is one here, Mr. Alberts. You might look at it and see if that is the one.

Mr. Alberts: How about this? (Handing document to Mr. Freeman.)

Mr. Freeman: Q. Mr. Wacker, do you know whether Mr. Thomasma was paid for the time that he spent with your attorneys in preparing, in making out his affidavit of November 17, 1940?

A. No. He was not, to my knowledge.

Q. And that affidavit was made here in Mr. Fidler's office?

A. I do not know where the affidavit was made. I know it was made. Whether it was made in Mr. Fidler's home or in his office, I don't know.

Q. Do you know whether Mr. Thomasma was paid for his time on November 28, 1940?

A. Not to my knowledge.

1004 Q. Was he paid for any time that he spent in connection with the affidavit of November 17, 1940?

A. Not to my knowledge.

Q. You were instrumental, were you not, in getting Mr. Thomasma to part with 260 shares of stock of the Precision Instrument Company?

A. No, I wouldn't say that I was instrumental. I don't know what he parted with. I think that Mr. Hobbs suggested that we might be that Mr. Fidler might be of assistance in getting some of that stock back for Precision. I believe, as I remember, he said it paved the way for concluding the arrangement on a basis satisfactory to them. I don't know what arrangements Mr. Fidler made on that.

Q. You do know that Mr. Fidler, representing Automotive, obtained the 260 shares of stock from Mr. Thomasma and turned the stock over to Mr. Hobbs?

A. I believe he obtained Mr. Thomasma's stock. I don't know how many shares it was. I don't remember.

Q. You do know that Thomasma had a stock interest in Precision?

A. Yes, sir.

Q. And in your report that you made of your meeting of November 3, 1940, you reported that Thomasma's stock had some value, did you not?

1005 A. I do not remember that. In fact, I never investigated its value.

Q. Mr. Thomasma told you that if he testified in the

case; that that would destroy the value of the stock that he owned in Precision Instrument Company?

A. He undoubtedly made that statement. That is not anything that I said.

Q. Well, that is what you understood him to say to you, prior to the time that you made the report dated November 5, 1940, is that correct?

A. I must have understood that or I wouldn't have put it in the report.

Q. Do you know what was given to Mr. Thomasma for his stock in Precision, which your counsel turned over to Mr. Hobbs?

A. I am under the impression that he received \$500.00 for that stock. That is my impression.

Q. From whom?

A. Well, I think that we were paid \$500.00 by Precision and I think we agreed to utilize that \$500.00 for the purpose of acquiring Mr. Thomasma's stock and turning it back.

Q. Was that paid for by check of the Automotive Company?

A. That I would not remember.

1006 Q. Do you know whether or not it was paid for by check of Davis, Lindsey, Smith & Shonts?

A. I wouldn't remember that specifically.

Q. But you do recall, now, that \$500.00 was paid for Thomasma's stock?

A. That is my recollection, yes, from what I was told.

Q. And who told you?

A. I believe Mr. Fidler told me.

Q. Do you have any letters or correspondence, or other documents, with respect to the stock purchase by your company or your attorneys, from Mr. Thomasma?

A. I don't think so. I do not remember any.

Q. Did you get any receipt from Mr. Thomasma for the \$500.00, other than a stock certificate itself?

A. Not that I am aware of. I imagine the cancelled check would have been its own receipt.

Mr. Freeman: I wonder if I might ask Mr. Fidler whether or not it was a Davis, Lindsey, Smith & Shonts check, or was it a check on the part of Automotive?

Mr. Fidler: My recollection is that it was our firm check that was given to Thomasma.

Mr. Freeman: And is it likewise your recollection, Mr. Fidler, that the amount was \$500.00?

Mr. Fidler: That is correct.

1007 Mr. Freeman: Q. Did your company give to Mr. Thomasma any release of any kind with respect to the stock transaction or as a part of the stock transaction, at the time you paid or your attorneys paid Mr. Thomasma \$500.00?

A. Not that I remember.

Q. Did you have any correspondence with your firm of attorneys to the effect at all, that they had purchased Thomasma's stock for \$500.00?

A. I believe that was taken up either in conference or over the telephone; I don't recall any records of it. If they exist, they are probably here now.

Q. And did you give your O.K. to the purchase of Thomasma's stock for the sum of \$500.00?

A. Yes.

Q. And you purchased that stock prior to any actual settlement of the Interference or the conclusion of the agreements that are now here involved?

A. I would not know about that. As I remember it, that was Mr. Hobbs' suggestion and one of the essentials to get the thing cleared up, that they wanted Thomasma out of the picture.

Q. Do you recall whether or not your company was invoiced for a disbursement of the \$500.00 paid by Davis, Lindsey, Smith & Shonts to Mr. Thomasma?

1008 A. We probably were invoiced. I mean I am certain if Davis, Lindsey, Smith & Shonts spent \$500.00 in our behalf, that we got a bill for it.

Q. And they didn't use the \$500.00 that was paid by Precision and Larson in making that purchase, did they?

A. I do not fully understand that question. I mean it was \$500.00 and whether it was the—

Q. Was that the reason that you wanted \$500.00 to be paid by Larson to your company?

A. No.

Q. What was the reason for the demand of \$500.00?

A. Well, we were told originally that that was all they were in a position to pay, in lieu of the royalties that were originally demanded.

(Whereupon a short recess was taken.)

Mr. Freeman: Mr. Fidler, do you have the correspond-

ence as between your firm and the plaintiff here, having to do with this Interference, as we requested?

Mr. Fidler: Yes.

Mr. Freeman: I wonder if we could have that, so that Mr. Ooms might look at it now and perhaps save a little time, as well as any correspondence or memorandums or inter-office communications carried on, in connection with this Interference, at the plaintiff's offices of the plaintiff here.

Mr. Fidler: I have correspondence between plaintiff and ourselves and correspondence from our files with the plaintiff, together with agreements and assignments and miscellaneous papers in the Interference. And do you want the correspondence of Mr. Thomasma?

Mr. Freeman: Yes. These papers that you are handing me are the papers that you have produced in response to my notice that I sent with my notice of taking testimony?

Mr. Fidler: That is right.

Mr. Freeman: That is, papers having to do with the Interference and negotiations of the Interference of Larson v. Zimmerman.

Mr. Fidler: That is right.

Mr. Freeman: Q. Mr. Wacker, do you know why no mention was made in the agreement of settlement as between your company and Larson or Precision, with respect to your purchase of Thomasma's stock for the sum of \$500.00?

A. No, I don't know, excepting that that was going to be an accomplished fact at the time the papers were signed, as I understand it. I don't know of any other reason.

Q. And not part of any settlement of the Interference?

A. No. I think that was something that Mr. Hobbs insisted on, that they wanted to get rid of Thomasma. Precision did. We were anxious to get the thing settled and cleaned up. It was costing us lots of time and plenty of money.

Q. And you thought it was cheap to pay \$500 and get rid of him, so that you could go on and make your settlement with Larson and Precision?

A. Well, we didn't have to get rid of Thomasma. It was their request that they wanted to get rid of Thomasma and suggestion that we might be more helpful in helping them do that than if they approached him direct.

Q. And you parted with your \$500 to get rid of him?

A. I imagine that that is correct, yes, as far as I know it is correct—not to get rid of Thomasma, but to get the deal cleaned up, to enable them to get rid of him.

Q. Well, you paid \$500 for his stock, to get his stock so that you could turn it over to Larson and Precision?

A. That is right.

Q. Did Mr. Fidler ever tell you that Larson lied in his testimony?

A. Well, he told me that he was very doubtful as to its veracity.

Q. That is putting it rather mildly, isn't it?

A. Well, I told you earlier that we definitely suspected it.

1011 Q. Did he ever tell you that Larson's testimony was a falsehood?

A. He told me that Thomasma had so stated.

Q. Did he ever tell you that Larson was guilty of perjury?

A. No.

Q. The word perjury was never mentioned in any of your conferences with Mr. Fidler, with respect to Larson's testimony?

A. I probably mentioned it. I am sure I did—I don't know—

Q. You are not a lawyer, but you understand what perjury means, do you not?

A. Certainly, I understand it. Perjury, as I understand it, means testifying falsely.

Q. Under oath?

A. Under oath.

Q. Did Mr. Lindsey ever report to you about a telephone call that he had with Mr. Hobbs wherein he told Mr. Hobbs that this matter would have to be settled within 24 hours?

A. I don't remember. On what date was that telephone call?

Q. A day or two before settlement was made?

The Witness: What was the date of the settlement? I have forgotten offhand.

Mr. Freeman: December 20th, 1940 was the date of the settlement.

1012 A. I know that Mr. Lindsey was disturbed because he felt that certain things had been tentatively agreed to and then suddenly you would hear nothing more

from them, and I think he suggested that if these understandings were not gone through with, that we would then resume taking testimony in the Interference. That is my recollection.

Q. Didn't you tell Mr. Lindsey that the matter would have to be cleaned up within twenty-four hours?

A. Not that I ever remember of, no.

Q. Did Mr. Lindsey tell you about this telephone conversation with Mr. Hobbs and what Mr. Hobbs told him, when Mr. Lindsey stated that the matter would have to be cleaned up with 24 hours?

A. No, I don't remember that.

Q. Do you know whether or not Mr. Hobbs hung up the telephone on Mr. Lindsey?

A. I don't know that.

Q. Do you know whether or not Mr. Lindsey then later called Mr. Hobbs and again talked to him, on that same day?

A. No. I understood that they had quite an argument, but I wasn't familiar with the details involved.

Q. Did Mr. Lindsey report to you that he called up Mr. Hobbs and invited him to have luncheon with him 1013 at the Union League Club?—

A. No.

Q. —on the following day?

A. No.

Q. Do you know whether or not Mr. Lindsey did have a meeting with Mr. Hobbs at the Union League Club, with respect to the settlement of this case?

A. I don't know where or when he met Mr. Hobbs, but I presume he must have met him, because the settlement grew out of the meetings of the attorneys.

Q. And the settlement grew out of the meeting of the attorneys following Mr. Lindsey's call to Mr. Hobbs giving Precision 24 hours to settle?

A. I told you I did not know anything about any 24 hour ultimatum. I had never heard of that.

Q. When were you informed that your attorneys were going to proceed to take the testimony of certain witnesses, particularly the wives of Carlsen and Larson?

A. Well, that was in December of 1940, after this thing—nothing happened apparently in relation to the settlement and then, as I understand it, Mr. Fidler and Mr. Lindsey came to the conclusion that we were more or less

being given the run around and that there was only one thing to do, and that was to continue taking testimony.

They had suggested settling the case and apparently 1014 they weren't very anxious to do it and so there was only one thing for us to do and that was to go ahead and take the testimony of the rest of the witnesses.

Q. And that was after the meeting of November 28th, 1940?

A. Yes.

Q. You have talked about suspicion at great length during the taking of this testimony. I would like now to have you tell me when you first learned that Larson's testimony was false, and I use the word learned as distinguished from your word suspicion?

A. I think I first learned that Larson's testimony was false when they conceded priority, although I really definitely learned it when Mr. Larson admitted it from the stand a few weeks ago in Judge Igou's court.

Q. You knew that Larson had admitted that he had perjured himself, prior to your executing the agreement with Precision Instrument Company on December 20, 1940, did you not?

A. No. I did not.

Q. You were just then operating on a mere suspicion?

A. That is correct. Nobody admitted to us that there was perjury there.

Q. And that suspicion cost you \$50 for a handwriting expert and over \$4700 for the investigators, is that correct?

1015 A. It certainly did. They had rigged up a case here which has subsequently been shown that was completely based upon perjury, and we would have been completely out of the picture and the indicator business if we hadn't taken some steps to defend ourselves.

Q. After you definitely learned that Larson had perjured himself and that Larson's witnesses had likewise perjured themselves, what did you do about it?

The Witness: After we had definitely learned?

Mr. Freeman: Yes. When I say you, I mean you and your company, Mr. Wacker.

The Witness: Yes.

A. Well, we in the meantime made a settlement with them. Remembering that situation where I think eight or nine witnesses of the opposition telling one story.

Against one man, who had been a disloyal employee of ours, telling another, now, we weren't in any position to go out and prove anything.

Q. You spent several thousand dollars for investigators prior to the time that Larson had even testified, did you not?

A. Well, we suspected, when these early dates were set up, that there was something funny going on somewhere, just in the light of our knowledge of the art. It was a funny time to come in with a patent application, any way, that many years after conception, right on the face of it.

Q. That was funny to you, was it not?

A. It was unusual, yes.

Q. And that same funny feeling existed in your mind when you signed the agreement on December 20, 1940 with Precision, is that correct?

A. You mean we were still suspicious; that is right.

Q. That same funny feeling?

A. That suspicious feeling. It is a little more accurate.

Q. When did you first see the torque wrench now sold by Snap-On, which you now charge to infringe the Zimmerman patents as well as the Larson patent?

A. I don't remember. I think we secured one. I believe our records would show that. Offhand I don't remember just when it was. I think we could develop that information from our records, however.

Q. In order to save time, I am wondering if you might have your records searched as to when you or your company first came into possession of information with respect to the torque wrench sold by Snap-On, and you give that information to your counsel there, Mr. Lindsey or Mr. Fidler?

A. We may have it now. I don't remember.

Q. And let them make a statement in the record. That will be sufficient as far as we are concerned.

A. All right.

Mr. Fidler: May I make the statement now?

Mr. Freeman: Go right ahead.

Mr. Fidler: I presume that you are referring to the torque wrench involved in this suit and to the internal mechanism of the wrench, the construction of it as a whole?

Mr. Freeman: I am referring to the wrench which you

charge to infringe the two Zimmerman patents and the Larson patent involved in this case now pending.

Mr. Fidler: About the middle of December, 1941.

Mr. Freeman: Mr. Fidler, are you talking about a physical device, or are you talking about any advertisement, or trade papers? If there is a difference in the dates, would you mind giving them to us?

Mr. Lindsey: I think Mr. Fidler tried to bring that out, Mr. Freeman.

Mr. Fidler: The first time that Automotive, or its counsel, were aware of the construction of the wrench, was about the middle of December, 1941. Prior to that time, advertisements had appeared indicating that there was a new wrench coming out; we heard of that sometime earlier, around about I believe October, 1941, but we were not able, by using every means that we could, by contacting Mr. Alberts and trying to buy on the market 1019 wrenches, to determine the construction of the wrench until about the 15th of December, 1941.

Mr. Freeman: Q. Were you responsible, Mr. Wacker, for filing the Application for Reissue of Letters Patent No. 2,269,503?

The Witness: How do you mean, was I responsible?

Mr. Freeman: Q. Were you instrumental in bringing about the filing of application for reissue?

A. Well, our attorneys did it on behalf of the corporation and I concurred with that.

Q. Did you make any inquiry from your attorneys as to what was covered in the original Patent No. 2,269,503, after you knew what Snap-On was selling by way of a torque wrench?

A. No, I don't think so. I left those matters to them.

Q. You do know that the application for reissue was made after Snap-On's torque wrench was on the market and you had an opportunity to see it; is that correct?

A. I do not remember the exact date. That might be so. It might be. I would prefer a record of dates; then I might be able to answer that more specifically.

Mr. Freeman: Mr. Wacker, you are at liberty to refer to any dates or documents that you want to. All we 1019 are interested in is getting the facts.

Mr. Lindsey: I may say at this juncture that I think this is outside of the subject for which discovery is sought.

The Witness: I have no—

Mr. Lindsey: Just a minute. And as to any privileged communication that passed between Mr. Wacker and his counsel, I object to their production, on the ground that they are privileged. My understanding was that this matter was going before the Court on May 10th on the question of the contracts and the perjury and the alleged compounding of perjury, and I think that your examination should be confined to that matter.

Mr. Freeman: If my memory is correct, Mr. Lindsey, I think the Snap-On has pleaded that Automotive is not in court with clean hands with respect to the Application for Reissue patent, because it first had an opportunity to see the torque wrench made for and sold by Snap-On and that thereafter the application for reissue was made.

Mr. Lindsey: That matter can be gone into later. That has nothing to do with the matter that comes up before the Court May 10th.

Mr. Freeman: With the understanding that we may again have an opportunity to examine Mr. Wacker, 1020 under the rules, in connection with any patent questions in this case, I will withdraw the question.

Mr. Lindsey: And with the further understanding that I am not waiving any right to make the same objection at that time, if I see fit.

Mr. Freeman: Q. Mr. Wacker, you used Mr. Thomasma to get information for you with respect to Precision Instrument Company; did you not?

A. I imagine Mr. Fidler asked him some questions.

Q. Did you ever ask him to get any information for you about Precision Instrument Company?

A. Not specifically. If he was asked, I think Mr. Fidler asked him.

Q. The stock was purchased by you, that is, Thomasma's stock in Precision Instrument was purchased by you in December of 1940?

A. That is as I remember it.

Q. And of course, you knew then that Mr. Thomasma had no more connection with Precision Instrument Company, that is correct, is it not?

A. I think he told us that he had been forced out and his only connection was that of a stockholder.

Q. Well, you know that he had sold all of his stock as early as December, 1940, did you not?

1021 A. Well, he sold his stock in connection with this settlement. Is that what you mean?

Q. What did you have in mind when you wrote Mr. Thomasma on June 25th, 1941 asking him to get you information about Precision, and I am handing you a letter which you have given me, dated June 25, 1941?

A. Oh yes, they agreed to discontinue the production of the type of wrench that was involved in the Interference after they had completed orders up to about 6,000 wrenches, and we began to wonder if they were living up to that agreement or not, whether they were still continuing to make wrenches beyond the amount of the 6,000, and I asked Mr. Thomasma if he had any way of checking that up for us.

Q. Do you think that that was a reasonable thing to do, when you knew of the existing controversy between Mr. Thomasma and Precision Instrument Company, to ask him to get you information?

(Mr. Alberts returned to the hearing room at this point in the proceedings.)

Mr. Lindsey: What existing controversy? On that date?

Mr. Freeman: The existing controversy—or rather, the controversy that existed shortly prior to your purchase of Thomasma's stock from Precision Instrument 1022 Company and at the time that you turned it over to Mr. Hobbs?

Mr. Lindsey: May I ask the date of that letter?

Mr. Freeman: June 25th, 1941.

Mr. Lindsey: You can call that shortly before, if you want to, but I don't. That is like the day before Christmas being December 23rd.

Mr. Freeman: Q: The purpose of asking Thomasma to get information on June 25th, 1941, was to get from Thomasma information as to what Precision was doing, is that correct?

A. That is right.

Q. And you then had a contract with Precision, did you not?

A. That is right.

Q. And you had a right to get a statement from Precision, did you not?

A. That is right. I believe that Mr. Fidler had written for such statement, of which I am not certain.

Q. And did you get such a statement from Precision?

A. I think we did at some previous date.

Q. And you were using Mr. Thomasma to check up?

A. That is correct.

Q. And did Mr. Thomasma get the information that you requested in your June 25th letter?

A. I don't think he was able to get it. We thought 1025 he might be able to determine it from some serial numbers or something of the kind, but I don't think he was able to get it.

Q. You wanted to get that information indirectly?

A. Yes, I wanted to check up. There was nothing that Precision had done in the past that inspired me with any confidence in them.

Q. And had Thomasma done anything that inspired you with confidence?

A. Not any particular thing, no.

Q. As a matter of fact, you had the same confidence in what Mr. Thomasma told you as you had in Precision Instrument Company, is that not so?

A. Well, to a varying degree, possibly, but there was a certain amount of lack of confidence there.

Q. You had lack of confidence in Mr. Thomasma's affidavit, did you not?

A. That is right.

Q. And yet, on June 25th, 1941, you were asking him to secure some confidential information for you?

A. That is right.

Q. And you were willing to rely on that confidential information?

Mr. Lindsey: I object to that question. He wasn't asked for any confidential information. He was trying to find out what the wrench was.

The Witness: Trying to find out how many were shipped.

Mr. Lindsey: Or whether they had finished the order. If that is confidential, I would like to know what is confidential.

Mr. Freeman: Q. When, after June 25, 1941, did you first see Mr. Thomasma?

The Witness: After June 25th?

Mr. Freeman: Yes.

A. I wouldn't remember when.

Q. Do you recall—

A. He came to my house one evening. I remember that, and called on me.

Q. In the summer of 1941?

A. I don't remember when it was. I would have to check that up.

Q. Do you recall whether or not it was after the letter of June 25, 1941?

A. I do not think it had anything to do with that letter. I don't know just when it was.

Q. Do you recall Mr. Thomasma asking that he see you some evening or week-end?

A. No. I remember he wanted to come out and show me a product that he had been working on and thought we might be interested in it.

Q. Do you remember him answering your letter 1025 of June 25, 1941, suggesting an evening or a week-end meeting, because he could tell you more in person?—

A. No, I don't.

Q. —than he could by letter?

A. I don't remember that. No.

Q. I now hand you a letter dated July 21, 1941, and will ask you to state whether or not that is a letter received by you from George B. Thomasma? (Mr. Freeman hands document to the witness.)

A. That certainly appears to be a letter from him to me. I didn't remember the letter, but I don't deny the letter.

Q. And that letter is in answer to the letter of June 25, 1941 which you wrote to Mr. Thomasma? (Mr. Freeman hands document to the witness.)

A. It would appear to be, yes, sir.

Q. And the initials P.I.M.Co. on the Thomasma letter are the initials of Precision Instrument Manufacturing Company?

A. I would assume so, yes. I have no reason to doubt that they would indicate anything else.

Q. Now, did you have a conference with Mr. Thomasma in accordance with his request that he meet you some week-end or evening and discuss Precision Instrument Company?

1026 Mr. Lindsey: I am going to interpose an objection here. This has nothing to do with the subject that is coming before the Court on this trial on May 10th. It has nothing to do with the contracts. It has nothing to do with the perjury. I see no reason to pursue that subject. It simply takes time.

(Discussion off the record.)

Mr. Lindsey: I will insist on this objection, unless Mr. Freeman is willing to state that this line of examination has something to do with the question of the validity of those contracts and the question of perjury.

Mr. Freeman: That is correct, and further, I am trying to find out upon what Mr. Wacker based this so-called suspicion that he talked about all day today.

Mr. Smith: Now will you read the question?

(Pending question read by the Notary.)

A. I think sometime later, I don't remember when, I would have to check it up, I believe Mr. Thomasma stopped at my house one evening. I am quite sure that he was unable to secure any information in response to the question I asked in my letter.

Mr. Freeman: Q. That is, it is your understanding that Thomasma was unable to get any information?

A. That is correct.

1027 Q. Well, what was there, then, that Mr. Thomasma conveyed to you, which he said in his letter of July 1st, 1941, you better he told in person than by letter?

A. I haven't any idea.

Q. Your memory doesn't serve you in that connection?

A. No.

Mr. Freeman: We offer in evidence as Snap-On Exhibit 17 a carbon copy of a letter dated June 25, 1941, from Automotive Maintenance Machinery Co. to George B. Thomasma, and a photostatic copy of the reply by George B. Thomasma to Mr. Fred Wacker, dated July 1st, 1941, as Snap-On Exhibit 18.

(Said documents were thereupon marked by the Notary as Snap-On Exhibits 17 and 18, respectively, for identification.)

Mr. Lindsey: I would like to ask Mr. Alberts if he found that assignment that Mr. Freeman referred to as having provided for the assignment of the improvements on the invention shown in the Larson agreement and which Mr. Alberts stated he was going back to the office and try and find it? Have you found that assignment, Mr. Alberts?

Mr. Alberts: I found a copy of the assignment you had before you here before I left, plus a copy of the 1028 assignment of Snap-On to Precision that was executed by Snap-On. That is all I found.

Mr. Lindsey: Did you find an assignment which provided for the assignment of improvements upon the invention shown in the Larson Application?

Mr. Alberts: No, I just found the assignment submitted by Mr. Fidler to me as the form he would require Larson to sign, and that merely called for "the entire right, title and interest in and to the inventions and improvements in Torque Wrenches described and claimed in said Larson Application, Serial No. 232,723", and so forth.

(Whereupon an intermission followed while Mr. Ooms and Mr. Freeman examined papers.)

Mr. Freeman: I am going to ask the reporter to mark a letter dated December 27, 1940, of Automotive Maintenance Machinery Co. to Davis, Lindsey, Smith & Shonts, Attention: Mr. R. E. Fidler, as Snap-On Exhibit 19.

(Said document, consisting of 2 pages, was thereupon marked by the Notary as Snap-On Exhibit 19, for identification.)

Mr. Freeman: Mr. Fidler, will these papers be available to us tomorrow as well, even though Mr. Wacker 1029 is not on the stand?

Mr. Fidler: Yes.

Mr. Freeman: That is, all the papers that you have produced?

Mr. Fidler: Yes, all that I have produced will be preserved in those envelopes.

Mr. Freeman: Here at your office, should we want them, is that right?

Mr. Fidler: Yes.

Mr. Freeman: That is all from Mr. Wacker.

Mr. Ooms: That is all for Larson and Precision, also.

Mr. Lindsey: May the record show that counsel for defendants have gone through a file of correspondence produced by Mr. Fidler, the file being in the neighborhood of an inch in thickness, and that from the file came Snap-On Exhibit 19 for identification.

Mr. Fidler: They were envelopes.

Mr. Ooms: 7 other envelopes or six envelopes.

Mr. Lindsey: Six or seven envelopes; and they have examined, rather, about six other envelopes of different documents, also correspondence and other matters.

Mr. Ooms: Let the record show that the examination was made in 1 2 or three-quarters of an hour, and that 1030 the defendants have been assured by counsel for the plaintiff that the files will remain available throughout the adverse depositions.

Mr. Freeman: The same stipulation with regard to

exhibits offered in behalf of Automotive shall likewise apply to the exhibits offered in half of Snap-On and Precision.

Mr. Fidler: Yes.

Signature of Witness.

1031 (During the reading of said deposition, at Page 28, the following occurred:)

Mr. Ooms: I would like to read that exhibit now. We have introduced it as Defendants' Exhibit 11 and we now so offer it.

(Said document was thereupon received in evidence by the court; was marked as DEFENDANTS' EXHIBIT No. 11, and was read to the court by Mr. Ooms:)

1032 (Thereupon Mr. Ooms resumed the reading of said deposition. During the reading of said deposition, at Page 44, the following occurred:)

Mr. Ooms: I would like at this time to offer in evidence as Defendants' Exhibit 12 the yellow memorandum of the handwriting expert produced at that time.

(Said document was thereupon received in evidence by the court and marked as DEFENDANTS' EXHIBIT No. 12.)

(Thereupon Mr. Ooms resumed the reading of said deposition. During the reading of said deposition, at Page 45, the following occurred:)

Mr. Ooms: They were produced here and offered in evidence a day or so ago when Mr. Wise was on the stand. They were the reports Mr. Fidler said he had made from the oral reports given him by the investigator.

(Thereupon Mr. Ooms resumed the reading of said deposition.)

1033 (Thereupon, at page 65 on the reading of said deposition, the following occurred:)

Mr. Ooms: May I have five minutes, your Honor?

The Court: Yes; take a five minute recess.

(A short recess was taken.)

(Thereupon counsel resumed the reading of said deposition, and at page 74 the following occurred:)

Mr. Ooms: "Mr. Lindsey: I would like to ask the reporter to mark for identification the Hobbs letter of December 6, 1940, to Mr. Fidler, as Automotive's Exhibit 11."

That has gone in under another number. It has been read.

(Thereupon counsel resumed the reading of said deposition, and at page 113 thereof, the following occurred:)

1034 I would like now to offer in evidence Defendants' Exhibit 19, the letter I have referred to, dated December 27, 1940, on the letterhead of Automotive Maintenance Machinery Co., addressed to Davis, Lindsey, Smith & Shonts, re Larson vs. Zimmerman Interference No. 77565.

(Said document so offered and received in evidence was marked DEFENDANTS' EXHIBIT 19, and was read to the Court by Mr. Ooms.)

(Thereupon counsel resumed the reading of said deposition, and at the conclusion of page 117 thereof, the following occurred:)

Mr. Ooms: I am now offering the deposition as Defendants' Exhibit 78.

(Said deposition, so offered and received in evidence, was marked DEFENDANTS' EXHIBIT No. 78.)

Mr. Lindsey: We would appreciate the right to call Mr. Wacker to the stand at this moment, and cross-examine him in connection with the matters contained in this deposition; the reason being, as we have stated before, he has been laid up; it might be there would be some difficulty in getting him down next week.

The Court: We can go ahead with Mr. Wacker.

1035 FRED G. WACKER, called as a witness by the plaintiff for cross-examination, having been first duly sworn, was examined and testified as follows:

Cross-Examination by Mr. Fidler.

Q. You are the Fred G. Wacker who gave a pretrial deposition in this case, and whose deposition was read a few moments ago by Mr. Ooms; is that correct?

A. I am.

Q. In that deposition there was reference to a meeting held in my office on November 28, 1940, at which time there was present Mr. Alberts, Mr. Johnson, yourself, Mr. Allen and I; were you present throughout that meeting?

A. Yes, sir.

Q. Now, Mr. Wacker, I hand you a letter dated June 30, 1941, and ask you whether or not that is a letter written by you.

A. Yes, sir.

Mr. Fidler: Your Honor, I am not going to read this letter; but there is one question that I would like to ask the witness about.

Mr. Ooms: May we have a copy of it?

Mr. Fidler: It is a letter I have shown opposing 1036 counsel. I wish to offer the letter in evidence at this time as Plaintiff's Exhibit 26.

(Said letter of June 30, 1941, so offered and received in evidence was marked PLAINTIFF'S EXHIBIT No. 26.)

Mr. Fidler: Q. Mr. Wacker, this letter in the second paragraph thereof refers to "Clean-handed Joe Johnson;" what was the basis of that statement?

The Witness: A. Well, when Mr. Johnson came into the meeting November 28th, his opening remark was to remind us that he was entering the meeting with clean hands; and he referred several times during the meeting to the fact that he had come with clean hands. With the result that our vice-president Mr. Allen and I jokingly nicknamed him clean-handed Joe from then on. And I guess I possibly referred to him in that way in this letter.

Q. Mr. Joe Johnson, who has testified further here in this case, testified as follows, on pages 356 and 357 of the record:

"And after you went into Mr. Fidler's office, what was said?

"A. Mr. Alberts introduced me; it was the first time that I had met Mr. Fidler; and he made the statement at that time that we were there solely in behalf of 1037 Snap-On Tools Corporation. To which Mr. Fidler replied that so far as he was concerned Snap-On was Precision, and Precision was Snap-On."

Is that testimony true?

A. No, sir.

Q. Mr. Johnson further testified, in answer to the question, "Did Mr. Alberts say anything about what he was going to do in connection with the Interference?"

"A. Oh, yes; he did state to Mr. Fidler that in view of the information that we have learned, that we would immediately get in touch with Mr. Larson; and that if the facts were substantiated by Mr. Larson, that he would

grant a concession of priority, or whatever it happened to be; in the Interference proceeding; and also that he would withdraw as attorney for Larson."

Is that testimony true?

A. Only partially. He did not say anything about granting priority. He said that if Mr. Thomasma's testimony proved to be true, that he would withdraw as counsel for Precision.

Q. That testimony I just read was at page 360 of the record. And also on that same page, Mr. Johnson was asked, "Did Mr. Fidler make any statement to you 1038 or Mr. Alberts, or to both of you, as you were leaving?"

A. Yes, he did. He didn't feel that a concession of priority would satisfy Mr. Wacker; that Mr. Wacker had spent considerable money on tension wrench patents, and that unless a satisfactory adjustment was made with him, that he would unleash the dogs."

Is that testimony true?

A. No, sir.

Q. Again, on page 361 of the record, Mr. Johnson testified, in answer to the question, "Mr. Fidler told you that?"

A. Yes, sir; he made that statement to Mr. Alberts and myself. He also said that they had discussed the matter with the United States patent officials, and that it was even a matter for the United States District Attorney."

Is that testimony true?

A. No, sir.

Q. Now, Mr. Harry C. Alberts has also testified in this case; did you meet Mr. Alberts?

A. I met him twice in your office; on November 28, 1940 was the first time.

1039 Q. Now, Mr. Alberts in testifying in this case, on page 430 of the record, testified, "And Mr. Fidler made a statement to me that he was proceeding on the basis that Snap-On was Precision and Precision was Snap-On, and only under those conditions or under that understanding would he give us the information directly from Mr. Thomasma;" is that testimony true?

A. No, sir.

Q. Mr. Alberts further testified on page 430 and 431 of the record, in response to the question, "And then what happened?"

A. Well, Mr. Fidler was quite shocked that I took

that position as abruptly as I had taken it. And he said, 'Well, Snap-On's hands are not too clean in this matter either.' And then Mr. Johnson replied by saying that Snap-On's hands were clean, not only in this matter, but all other dealings; that they had dealt in the past, and would continue in the future to deal on a high plane. And for a moment nothing was said by anybody. Finally Mr. Fidler said to Mr. Wacker, 'What shall we do about it?'

Or, 'What do you think we should do?' Mr. Wacker 1040 replied and said, 'Well, it is up to you.' And Mr.

Fidler said, 'Well, you are here now. I told you I would get you the information first hand. I have Mr. Thomasma here. We might as well go ahead with the conference.' And we then proceeded. He called in Mr. Thomasma."

Is that testimony true?

A. No.

Q. Mr. Alberts further testified, on page 431 and 432 of the record that; "He was introduced to Mr. Johnson, and he was introduced to me."—Referring to Mr. George B. Thomasma.

A. That/who was introduced to whom?

Q. I will restate: Mr. Alberts was asked the question, "That is George B. Thomasma?" And Mr. Alberts answered, "George B. Thomasma. He was introduced to Mr. Johnson, and he was introduced to me. We shook hands, that was the first time I had seen him. Mr. Johnson remarked to me after we sat down that that is the first time he had seen him. Mr. Fidler asked me if I wanted to ask the question, and I said, 'Well, you go ahead; you are more familiar with what you want to produce than I am.

You ask him the questions, and if I have anything to 1041 add I will ask permission later on to direct some questions to him.'" Is that testimony true?

A. Well, I remember it was agreed that you were to ask the questions; and when you got through asking the questions you asked Mr. Alberts did he have any questions that he would like to ask. That is as I remember that.

Q. On page 433 of the record Mr. Alberts further testified, "When Mr. Fidler said that he was through, and asked me if I had any questions, I said I had a few questions; and he said go ahead. So I examined Thomasma on what he had know about Snap-On Tools Corporation; and about myself; if he was the inventor of this, why didn't he

come in to see me. He replied by saying that Larson and Carlsen refused to allow him to come and see me; that he wanted to come and see me, but they absolutely prohibited him from coming to see me. I asked him if he had gone to Snap-On Tools Corporation about this matter. He said that he had accompanied Larson to the plant at one time but did not go in, at the insistence of Mr. Larson. I asked if he had met Mr. Joe Johnson then; he said no. I asked him if he had met me before, and he said no, he did not. I asked him why he did not come to see me, if he was the

inventor he should have told me about this invention, 1042 and I could then have prepared the Application in his name, if he was the inventor; that was the proper way of doing. He said that Larson and Carlsen insisted if I knew that an ex-employee of Precision was connected with Snap-On, they would cancel the contract. That was the thing they could not afford to have happen, and they knew that neither I nor Snap-On Tools Corporation would stand for Thomasma's connection with Precision."

Is that testimony true?

A. Nothing of that kind was said at that meeting.

Q. Mr. Alberts further testified, on pages 434 and 435 of the record: "Well, we got our coats and hats; we stood up and were about to leave, when I made the statement to Mr. Fidler that under all of the circumstances that were presented to me at that meeting, that I would withdraw as attorney for Larson, that I would recommend to Snap-On Tools Corporation that they consent to Larson conceding priority of invention to Zimmerman; that they would use their influence on Larson to see that that was done; that I saw no other way out of it."

Is that testimony true?

A. No; there was no mention made of concession 1043 of priority at all.

Q. Mr. Alberts further testified on page 436 of the record: "A. I told Mr. Fidler that I would be willing to have Snap-On consent to a concession of priority; and upon my recommendation I knew that whatever I recommended would be acceptable to Snap-On; and I knew that whatever Snap-On insisted of Larson, he would do."

Is that testimony true?

A. No, sir.

Q. Again, on page 437 of the record, Mr. Alberts testi-

fied—and you understand, this testimony was directed to the conference at my office on November 28, 1940.

A. That is right.

Q. Mr. Alberts testified, at page 437 of the record:

A. Mr. Fidler came up to Mr. Johnson and myself and told me that Mr. Wacker had spent over \$5,000 investigating Larson and his associates; that a concession of priority alone would not satisfy him; that not only would it not satisfy him, that this matter had to be settled to the satisfaction of Mr. Wacker, and settled promptly, or else Mr. Wacker would instruct him to unleash the dogs. And he continued by saying that he had already talked to the

Patent Office official, and that if Mr. Wacker was 1044 compelled to go to Hartford to prove his case, and to go through with this thing at the additional expense, that he certainly would have to go to the District Attorney with this matter.

Is that testimony true?

A. Certainly not.

Q. Mr. Alberts further testified, on pages 437 and 438 of the record: A. Mr. Zimmerman was then residing at Hartford. During the discussion they told us that Zimmerman no longer was with Automotive Maintenance Machinery Co., and that he was then living in Connecticut. And Mr. Fidler and Mr. Wacker got into a discussion as to the merits of Mr. Zimmerman as an engineer; with which we were not of course interested.

Is that testimony true?

A. No, it is not.

Q. Mr. Alberts further testified, on page 438,—

A. May I correct my last statement. We may have mentioned that Mr. Zimmerman was in Hartford, but we never discussed his merits as an engineer.

Q. Now, on page 438 of the record, Mr. Alberts testified, in answer to the question, "And what happened after

Mr. Fidler made the statement to you that concession 1045 would not be satisfactory; what did you tell him, or how did you part company with Mr. Fidler?"

And he answered, "Well, I could say very much as to that; I told him that he would hear from me or Larson, or some attorney in behalf of Larson; he certainly would hear from me on behalf of Snap-On Tools Corporation."

Is that testimony true?

A. I do not remember it.

Q. Who came to that meeting first, on November 28th?

A. In your office?

Q. Yes.

A. Allen and I came in first.

Q. And who left first?

A. Johnson and Alberts left first, unless possibly Thomsma went out first; I would not be sure on that.

Q. Now, up until the time that the agreements involved in this case were signed, were you aware that the testimony given by Larson, or any of it, or of any of his witnesses, the testimony given in this Interference was false or perjured testimony?

A. Well, I was suspicious of it, but we were not in any position to prove that it was false; we didn't know that it was false.

Q. When did you first become aware that such testimony was false or perjured testimony?

A. When Mr. Larson admitted it in this court room a few days ago.

Q. Did you at any time charge Larson or any of the witnesses testifying on his behalf, with the crime of perjury on account of the testimony given in the Interference?

A. Never.

Q. Did you at any time threaten to institute prosecution against Larson or any of his witnesses unless there was transferred to your company the Larson Application involved in the Interference and the sum of \$500.00, and unless they executed the agreement that you entered into with them?

A. Not at any time.

Q. Did you at any time promise to withhold complaint against Larson, or any of his witnesses, and suppress evidence of his or their perjury if the Larson Application and the sum of \$500.00 were transferred to you and the Automotive Precision and Larson agreement were executed?

A. No, sir.

Q. Did you at any time, before or after the execution of the agreements between Automotive and Precision and Larson, and Automotive and Snap-On, suppress the evidence of Larson's perjury, or the perjury of his witnesses, and withhold making complaint to the proper officers of perjury known to you to have been committed by Larson or his witnesses?

A. No, sir.

Q. Did you at any time threaten Snap-On and its attor-

ney, who acted as attorney for Larson in the Interference, with the crime of possessing and concealing knowledge of the commission of perjury by Larson and others in his behalf?

A. No, sir.

Q. Did you at any time threaten Snap-On and its attorney, who acted as Larson's attorney in the Interference, with action for alleged civil and criminal conspiracy to defraud and damage Automotive by unwarrantedly delaying the issuance of its patent with perjured testimony and evidence fostered or intended to be fostered upon the Patent Office?

A. No, sir.

Q. Did you at any time, either prior to or after the Snap-On Automotive agreement, threaten or continue 1048 to threaten Snap-On, its attorney, Larson, and others with prosecution?

A. No, sir.

Q. Did you at any time make any threats or repeat any threats of any kind against Snap-On, its attorney, Larson, and others, or repeat any threats to a point that Snap-On was coerced to cooperate with Larson and Precision and to subscribe to Automotive's terms that were tendered in the form of the agreements between Automotive and Snap-On and Automotive and Precision involved in this case?

A. Not at any time.

Q. Were the contracts, or either of them, entered into in consideration of Automotive's promise to suppress all causes of action against petitioner and the crime of perjury against Larson or any of his witnesses?

A. It was not even discussed.

Q. Did you at any time coerce Snap-On or its attorney or Larson, or did you place them under duress or did you make any persistent threats against them in respect to the crime of perjury or the suppression of the crime of perjury or evidence thereof?

A. I did not.

1049 Q. Did you through duress, coercion and the force of threats procure the execution of the agreements?

A. No, sir.

Q. Did you at any time do anything to compel the cancellation between Snap-On and Larson of the agreement of September 28, 1938?

A. No, I did not.

Mr. Fidler: That is all, your Honor.

Examination by Mr. Freeman.

Q. You knew that if Larson's testimony was true, that Larson should have prevailed in the Interference, and you would be out of business instead of Precision, at the time you made your settlement; did you not?

A. We suspected that, yes.

Q. You knew that if Larson's testimony was true, Larson should have prevailed?

A. If it had been true; and we suspected that it was not true.

Q. You suspected it was not true?

A. That is right.

Q. And you dealt merely upon suspicion?

1050 A. That is correct.

Mr. Lindsey: Dealt with whom?

Mr. Freeman: With Precision and Snap-On.

Q. And you used that suspicion in bringing about a settlement of this case; is that correct?—I am referring to the Interference case.

The Witness: A. Why, I don't think that we used any suspicion to settle the case.

Q. Well, what did you use?

A. I think we permitted Mr. Alberts and Mr. Johnson to hear the story of Mr. Thomasina; and that resulted in the settlement.

Q. Did you ever make any claim against Snap-On or Precision for civil damages?

A. No, sir.

Q. I hand you a letter dated February 3, 1944, on your stationery, and appearing to have your signature thereon; that is a letter written by yourself, is it not?

A. It looks like it; yes, sir. Do you want me to read it?

Q. I will read it;

Mr. Fidler: Let us see the letter.

1051 Mr. Freeman: Yes; (Handing document to counsel.)—

Q. You were perfectly willing to spend money, if you could keep Snap-On in line; is that correct?

A. I don't know what you mean by that question.

Q. Well, if you could keep Snap-On out of the torque wrench business, you were perfectly willing to spend your company's good money?

A. We were trying to protect our particular construe-

tion and type of torque wrench, which we felt we had originally developed.

Q. And you were willing to spend your money to keep Snap-On out of that kind of business; that is, the torque wrench business?

A. We were willing to spend money to protect our own patent rights against any one who might have attacked them.

Mr. Freeman: I offer in evidence the letter of February 3, 1941, as Defendants' Exhibit 60, on the letterhead of Automotive Maintenance Machinery Co., addressed to Davis, Lindsey, Smith & Shonts, Attention Mr. R. E. Fidler, in re Interference 77565, Automotive-Snap-On settlement agreement.

(Said document so offered and received in evidence 1052 was marked DEFENDANTS' EXHIBIT No. 60.)

Mr. Freeman: And I now read Defendants' Exhibit 60, signed by Automotive Maintenance Machinery Co., by Fred G. Wacker:

(Counsel reading Defendants' Exhibit No. 60.)

Mr. Freeman: Q. Will you please explain just how you would be put on the spot if the government insisted on a particular size and type of wrench?

The Witness: A. Yes, sir; we are manufacturing exclusively today for the various armed services. In fact, everything we make goes to the armed services; and we did not want to get ourselves in the position with the armed services of opposing or taking an action which would prevent them from securing something that they needed for war purposes.

Q. Well, you knew that the wrenches that were being made by Precision and sold by Snap-On; that is, the amount of 6,000, was going to the government; did you not?

A. We understood that a large part of them were; yes, sir.

Q. And if the government insisted upon the same size, and so forth, where would that have put you on any spot; — as long as the government was getting wrenches?

A. We would have either had to supply them ourselves, which we might not have been able to do, in addition to our other commitments, or would have been put in the position of opposing the demands of the government.

Q. Well, isn't it true that if Snap-On was able to fur-

nish the government wrenches, you would not have got that business?

A. Well, we have got plenty of it.

Q. Well, I am talking about the business back there around February, 1941.

A. We were competing for it; I don't know just what you mean by that.

Q. I am just trying to find out what you meant when you said, "And if that should happen it will certainly put us on a spot."

A. Well, we did not want to be put in a position, with any of the services we were furnishing, of appearing to oppose procuring supplies. Our relations were too friendly.

Q. That is, with the government?

A. Yes, sir.

Q. And you did not want to oppose the government securing their wrenches—

A. That has got nothing to do with it.

1054 Q. I want to know where you would have been on the spot.

Mr. Fidler: I object; he has already testified twice.

Mr. Freeman: I think he can answer this one question; and I am through.

The Court: He takes pretty good care of himself.

The Witness: A. I have answered.

Mr. Freeman: Q. That is the best answer you want to make?

A. Yes, sir.

Mr. Freeman: That is all.

Mr. Fidler: That is all.

(Witness excused.)

1055 Mr. Ooms: What we on the defense will have to do before we rest is to read the Thomasma affidavit, Defendants' Exhibit 21, and then a few letters about which there is no dispute of any kind. They have been ex-

1056 changed, and copies are in everybody's possession. I will try to go through these things as quickly as I can but I am sure I cannot go through them as quickly as I thought I could last Thursday, when we were talking about the time.

(Defendants' Exhibit No. 21 was thereupon read to the Court by Mr. Ooms.)

1057 Mr. Ooms: Pages 83 and 84 are in the form of a narrative statement, reading as follows:

(Counsel reading to conclusion.)

1058 Mr. Ooms: I would like at this time to offer on behalf of the Defendants, the following exhibits, many of which were marked and numbered during the taking of the pre-trial depositions. Those markings will be retained. I expect to read only two of these. The others may be referred to in the examination of some of the witnesses.

As Defendants' Exhibit No. 28, a letter of April 1, 1941, from Mr. Wacker to George B. Thomasma.

As Defendants' Exhibit No. 29, a letter from Mr. Thomasma to Mr. Wacker, of April 16, 1941.

As Defendants' Exhibit No. 44, a letter of April 21, 1941 from Mr. Wacker to Mr. Fidler.

As Defendants' Exhibit No. 30, a letter of April 21, 1941, from Mr. Wacker to George B. Thomasma.

As Defendants' Exhibit No. 81, a letter of June 4, 1941, from Mr. Wacker to George B. Thomasma.

As Defendants' Exhibit No. 45, a letter of June 20, 1941, from Mr. Fidler to Mr. Thomasma.

As Defendants' Exhibit No. 32, a letter of June 21, 1941, from Mr. Wacker to Mr. Thomasma.

As Defendants' Exhibit No. 46, a letter of June 24, 1941, from Mr. Thomasma to Mr. Fidler.

As Defendants' Exhibit No. 33, a letter of June 25, 1941, from Mr. Wacker to Mr. Thomasma.

As Defendants' Exhibit No. 47, a letter of June 25, 1941, from Mr. Wacker to Mr. Fidler.

As Defendants' Exhibit No. 17, a letter of June 25, 1941, from Mr. Wacker to Mr. Thomasma.

As Defendants' Exhibit No. 48, a letter of June 27, 1941, from Mr. Fidler to Mr. Thomasma.

As Defendants' Exhibit No. 49, a letter of June 30, 1941, from Mr. Thomasma to Mr. Fidler.

As Defendants' Exhibit No. 18, a letter of July 1, 1941, from Mr. Thomasma to Mr. Wacker.

As Defendants' Exhibit No. 34, a letter of July 2, 1941, from Mr. Fidler to Mr. Wacker.

As Defendants' Exhibit No. 34 A, an enclosure of June 30, 1941, being a typewritten copy of a letter from Mr. Thomasma to Mr. Fidler.

As Defendants' Exhibit No. 35, a letter of July 8, 1941, from Mr. Wacker to Mr. Thomasma.

As Defendants' Exhibit No. 36, a letter of July 28, 1941, from Mr. Wacker to Mr. Thomasma.

As Defendants' Exhibit No. 50, a letter of Mr. Thomasma to Mr. Fidler, December 1, 1941.

As Defendants' Exhibit No. 37, a letter of March 25, 1942, from Mr. Thomasma to Mr. Wacker.

As Defendants' Exhibit No. 38, a letter of Mr. Thomasma to Mr. Wacker, of April 1, 1942.

As Defendants' Exhibit No. 39, a letter of April 1942, from Mr. Thomasma to Mr. Wacker.

As Defendants' Exhibit No. 40, a letter of April 28, 1942, from Mr. Wacker to Mr. Thomasma.

As Defendants' Exhibit No. 41, a letter of June 12, 1942, from Mr. Wacker to Mr. Thomasma.

As Defendants' Exhibit No. 43, a letter of October 10, 1940, from Mr. Fidler to Mr. Wacker.

As Defendants' Exhibit No. 52, the statement of the handwriting expert, Rudolph B. Salmon, to examination, comparison and opinion of drawings in re Zimmerman vs. Larson, dated December 27, 1940.

As Defendants' Exhibit No. 79, a letter from Mr. Fidler to Mr. Wacker, of October 13, 1939.

As Defendants' Exhibit No. 80, a letter of November 9, 1939, from Mr. Wacker to Mr. Fidler.

As Defendants' Exhibit No. 81, a letter of November 13, 1939, from Mr. Fidler to Mr. Wacker; and as Defendants' Exhibit No. 81-A, a Dun and Bradstreet report on Precision Instrument Manufacturing Co., attached to that letter.

As Defendants' Exhibit No. 82, a letter of November 21, 1939, from Mr. Fidler to Mr. Wacker.

As Defendants' Exhibit No. 82-A, an abstract of 1062 the certificate of incorporation of Precision Instrument Manufacturing Co., attached to Exhibit 82.

As Defendants' Exhibit No. 83, a letter of November 24, 1939, from Mr. Wacker to Mr. Fidler.

As Defendants' Exhibit No. 84, a letter of June 4, 1940 from Mr. Fidler to Mr. Wacker.

As Defendants' Exhibit No. 85, a letter of July 22, 1940 from Mr. Fidler to Mr. Wacker.

As Defendants' Exhibit No. 86, a letter of July 24, 1940 from Mr. Wacker to Mr. Fidler.

As Defendants' Exhibit No. 87, a letter of August 5, 1940, from Mr. Fidler to Mr. Wacker, and this is a letter I would like to read at this time.

(Defendants' Exhibit No. 87, was thereupon read to the Court by Mr. Ooms.)

Mr. Ooms: As Defendants' Exhibit No. 88, we offer the letter of August 16, 1940, from Mr. Fidler to Mr. Wacker.

As Defendants' Exhibit No. 89, the letter of September 20, 1940, from Mr. Fidler to Mr. Wacker.

As Defendants' Exhibit No. 90, the letter of October 19, 1940, from Mr. Fidler to Mr. Wacker.

As Defendants' Exhibit No. 91, the letter of November 4, 1940, from Mr. Fidler to Mr. Wacker.

As Defendants' Exhibit No. 91-A, a statement signed by two of Automotive's employees, attached to the letter, Defendants' Exhibit No. 91.

As Defendants' Exhibit No. 92, a letter of November 23, 1940, from Mr. Fidler to Mr. Wacker, which I would like to read.

(Defendants' Exhibit No. 92 was thereupon read to the Court by Mr. Ooms.)

Mr. Ooms: As Defendants' Exhibit No. 93, a letter of November 23, 1940, from Mr. Fidler to Mr. Wacker.

As Defendants' Exhibit No. 94, a letter of December 21, 1940, from Mr. Fidler to Mr. Wacker.

As Defendants' Exhibit No. 95, a letter of December 26, 1940 from Mr. Fidler to Mr. Wacker.

As Defendants' Exhibit No. 96, a letter of December 26, 1940, from Mr. Fidler to Mr. Wacker, which I would like to read.

(Defendants' Exhibit No. 96 was thereupon read to the Court by Mr. Ooms.)

Mr. Ooms: As Defendants' Exhibit No. 97, a letter of December 28, 1940, from Mr. Fidler to Mr. Wacker.

As Defendants' Exhibit No. 98, letter of January 10, 1941 from Mr. Fidler to Mr. Wacker.

As Defendants' Exhibit No. 99, a letter of January 31, 1941, from Mr. Fidler to Mr. Wacker.

As Defendants' Exhibit No. 100, the letter of June 27, 1941, from Mr. Fidler to Mr. Wacker.

That is all the exhibits we have at this time.

The Court: If there are no objections they may be admitted.

Mr. Lindsey: No objection, your Honor.

(Which said documents were thereupon received in evidence by the Court and marked respectively as DEFENDANTS' EXHIBITS Nos. 28, 29, 44, 30, 31, 45, 32, 46, 33, 47, 17, 48, 49, 18, 34, 34-A, 35, 36, 50, 37, 38, 49, 40, 41, 43, 52, 79, 80, 81, 81-A, 82, 82-A, 83, 84, 85, 86, 87, 88, 89, 90, 91, 91-A, 92, 93, 94, 95, 96, 97, 98, 99 and 100.)

Mr. Ooms: I understand Mr. Lindsey wants to proceed with cross examination on a matter reserved with respect to Mr. Alberts.

Mr. Lindsey: In connection with the file I called for, may your Honor please.

1065 HARRY C. ALBERTS, resumed the stand and testified further as follows:

Cross Examination by Mr. Lindsey. (Resumed.)

Q. Mr. Alberts, previous to the conclusion of your cross examination, which was last Thursday, I think, I asked you to produce your application file, that is, your file on the application which matured into the Larson Patent No. 2,312,104, Plaintiff's Exhibit No. 24. The file was handed to me by Mr. Freeman, and there were some things that I couldn't find in it, and I called Mr. Freeman Saturday morning and told him in particular that I would like to obtain from you the photostatic copy of the drawing which you said you worked from when you prepared a roughed-out specification and also claims on December 26, 1940, and he said he would speak to you about that.

Now, do you have here in the court room that photostatic copy of the drawing that you re-sketched?

A. I do not have the re-sketched work sheets of drawing nor the work sheets of specification or claims. Those are not retained in the file. My stenographer disposes of all work sheets as soon as the Patent Application has been checked. That is the regular procedure in my office.

1066 And none of my files, except where they erred in not removing the work sheets, contain them. But I do have here my file copies or negative photostats of the drawings from which I worked, that is, the photostats from which I worked.

Q. These photostats which you hand me are from another application, is that correct?

A. They were for the Larson second Patent Application, yes.

Q. And, as I understood your testimony, you took photostats such as these that you handed to me, and sketched in the changes and variations from that wrench shown in those photostats in order to illustrate the wrench shown in the Larson Patent Exhibit No. 24, is that correct?

A. Well, substantially correct. I did have positive photostats in the file. At that time the client's copy of the specification and claims, and the photostats were not delivered to the client because I didn't know whether to deliver them to Snap-On or to Larson, so we retained those in the file. When we found those in the file, that is when I told Mr. Larson that from what I had already prepared and what I had in the files I could prepare a Patent Application for him, and I had before me a model which 1067 he then presented to me, and which I understand Mr. Ooms now has. From that model and the positives of these photostats I was able to make the variations upon which I put these numerals as I progressed in rewriting the specifications or claims from the draft that pertained to this Patent Application, and I instructed the draftsman to follow the figures on this drawing in making the drawings which resulted in part of the Patent Application that eventuated into Patent No. 2,312,104.

If you will compare the figures on the photostats with the figures on the drawing, they match figure for figure, with the exception of a few minor details in the last sheet, and this Patent Application from which I prepared the case had more in it than I wanted to put in this particular application, so a large part of the modification involved in it is the elimination of what already had been compared, rather than addition—however, there were inserts made too, to adapt what I had already prepared in connection with this Application to the specific structure of the Invention covered by Patent No. 2,312,104.

Mr. Freeman: "By 'this Application' you are referring to the second Application?"

1068 The Witness: The second Larson Patent Application, the one that was prepared and filed after the one that was assigned to Automotive.

Mr. Lindsey: You have no objection if I offer these photostats in evidence as Exhibits?

Mr. Freeman: Ask him whether it is a pending application. I have no objection.

Mr. Lindsey: He has produced it. I don't think it matters whether it is pending now or not.

I will offer the photostats in evidence as Plaintiff's Exhibit No. 51.

The Witness: I would like to have them make positives from those negatives and return those to my file.

Mr. Lindsey: We have been doing that throughout the case.

The Court: It is understood they will do that in connection with these.

(Said documents were thereupon received in evidence by the Court and marked PLAINTIFF'S EXHIBIT No. 51, sheets 1 and 2.)

Mr. Lindsey: Q. Mr. Alberts, after you had made these resketched drawings on this photostat, did you keep it in your file or did Mr. Larson take it with him to 1069 Kenosha that day?

A. What is that, the drawing?

Q. Yes.

A. No, he just took the prepared specification and claims, and took the model from me, and I told him then that as far as I was concerned and as far as I knew, that he would have to conform the appearance of his new wrench to the exterior appearance of his old wrench, if he expected Snap-On to find an interest in it, even though the structure of the new wrench was satisfactory to them. So he thought he could do that, and he then took the description with him.

Q. Well then, when Mr. Larson executed the application for Patent No. 2,312,104, he had no drawings?

A. Not with him, no. He saw the drawings as I changed them, and o.k.'d the changes as I had them on the photostats.

Mr. Freeman: Mr. Lindsey, do you mean whether he had none of his patent office drawings?

Mr. Lindsey: Q. I mean he had no drawings with him to show the notary who took the oath, did he?

A. No, he didn't.

Q. Is it the custom in your office to prepare invention records with respect to each submitted invention such as Automotive's Exhibit No. 9, covering the Walraven invention?

A. That is prepared by the client. I had nothing to do with that. I set up these forms for Snap-On to follow, and I gave that to the engineering department. I have nothing to do with that.

Q. Was one prepared in connection with this Larson Application that we have been discussing?

A. It wasn't prepared in my office.

Q. You had but one stenographer in your employ dur-

ing the last half of December, 1940, did you not, Mr. Alberts?

A. That is right.

Q. Now I want to show you, from the file which you produced with respect to the Application maturing into the Larson Patent, Exhibit 24, fifteen pages of specification and seven pages of claims, not including the oath, and the formal papers: When was this specification and claims prepared?

A. Well, they were prepared as I went along; as I prepared the first sheets I would give them to her, and she would copy them, and then I would go on and prepare some more, and when she was ready for more she would come to me and take what I had done, and that is the way we worked.

Q. In other words, these particular papers or the originals of these particular typewritten pages that I have referred to were prepared on December 26, 1940, is that correct?

A. With this qualification, that when I read over the work the following time for correction, I made the corrections in a copy. I think that particular copy stayed in my office file. Then I gave the papers back to her to make the corrections on the original and whatever copies that she had, leaving it to her judgment to correct it on the sheets prepared on December 26, 1940, or to rewrite them if they needed rewriting. She used her own judgment about that.

Now, in order to give you a complete answer on that, I would have to see the file, a photostat of what is in the Patent Office. Now, from page 2, for instance, the crosses indicate where I caught an inclusion which I did not want in, and I wouldn't know whether she erased it on the original or rewrote the sheet. Apparently she just erased it on the original.

Going to, for instance, page 7, I see some erasures there, some changes in pen and ink. I wouldn't know

what she did in that connection. She should have— if the corrections were sufficient to warrant recopying, she should have recopied them. If she could make the changes without defacing the paper or producing a sheet that was not too, I should say—well, I don't know—

The Court: Too sloppy, is that what you mean to say?

The Witness: Sloppy, that is right. She had the authority to change it on the typewriter on the original copy.

Now, I didn't follow this through. I have a rather active practice and I leave a lot of that to the stenographer.

Mr. Lindsey: Q. But the point that I was making was that the fifteen pages of specification and the seven pages of claims—sixteen pages—were all typewritten on December 26th, 1940, is that correct?

A. That is substantially correct. If there was an insert it wouldn't have amounted to much. I wouldn't say as to that.

Q. Now, you have referred to a model. Will you please produce that model of the wrench?

A. I don't have it.

Q. Is this the model which I hand you, Mr. Alberts?

A. That is the model. It looks a little more polished now than it did then.

Mr. Lindsey: Have you any objection, Mr. Freeman, if I offer that in evidence?

Mr. Freeman: No.

Mr. Lindsey: I will offer the model in evidence as Plaintiff's Exhibit No. 52.

(Said article was thereupon received in evidence by the Court and marked as PLAINTIFF'S EXHIBIT NO. 52.)

Mr. Ooms: May the record show, Mr. Lindsey, that I have had it in my custody since, oh, about two weeks ago, and it hasn't been in Mr. Alberts' custody in the meantime, and that I produced it today?

Mr. Lindsey: No objection, of course.

The Court: Is that all of this witness?

Mr. Lindsey: That is all.

(Witness excused.)

The Court: All right, Mr. Alberts.

Mr. Freeman: Defendants rest.

Whereupon the Defendants Rested Their Case in Chief.

1074 Mr. Lindsey: I would like to make a demand on Defendants' counsel to produce all of the testimony and all the exhibits introduced during the taking of testimony in the interference, except, of course, what has already been produced.

Mr. Ooms: No demand is necessary. We volunteer to produce that.

Mr. Lindsey: I will offer that a little later, Your Honor, after we straighten the matter out.

Mr. Freeman: May I return the file to Mr. Alberts?

Mr. Lindsey: Yes, indeed.

Clerk's Certificate.

574a

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

I, Kenneth J. Carrick, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing printed pages contain a true copy of Volume I of the record, which together with Volume II thereof, constitute the printed record, printed under my supervision and filed on the seventeenth day of November, 1943, in:

Cause No. 8392.

Automotive Maintenance Machinery Company,
Plaintiff-Appellant,

vs.

Precision Instrument Manufacturing Company, Kenneth
R. Larson and Snap-On Tools Corp.,
Defendants-Appellees,

as the same remains upon the files and records of the United States Circuit Court of Appeals for the Seventh Circuit.

In Testimony Whereof I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Seventh Circuit, at the City of Chicago, this 14th day of July, A. D. 1944.

(Seal)

(signed) Kenneth J. Carrick,
*Clerk of the United States Circuit Court
of Appeals for the Seventh Circuit.*